

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Revision No.2160 of 2017

Reserved on: May 18th 2018

Pronounced on:24th May, 2018

Kunwar Anand Singh

..Petitioner

versus

Paramjit Singh and others

..Respondents

CORAM: **HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Sandeep Arora, Advocate, for the petitioner

Mr. S.P.Soi, Advocate, for respondent no.2.

RAMENDRA JAIN, J.

1. Feeling aggrieved against order dated 12.12.2016 passed by learned Additional Civil Judge (Senior Division), Nakodar, dismissing the application of the petitioner under Order 1 Rule 10, Civil Procedure Code, for impleading legal heirs of deceased Balwinder Singh, namely, Palwinder Kaur, widow and Kiran, daughter, as defendant nos 3 and 4 in the main suit, the petitioner has knocked at the door of this court, filing revision under Article 227 of the Constitution of India for setting aside the aforesaid order of the trial court, being illegal, void and without jurisdiction.

2. Learned counsel for the petitioner has vehemently argued that the approach of the learned trial court in dismissing the application of the petitioner under order 1 Rule 10, Civil Procedure Code, is unsustainable in eyes of law, being contrary to the facts on record. Therefore, the impugned order is liable to be reversed. The learned trial court has committed a grave error in observing that the petitioner has filed application just to delay the

proceedings in the main suit, pending since more than five years. The factum of death of Balwinder Singh was already in the knowledge of the petitioner even at the very moment of filing of the present suit. The observation that the relief, sought in the suit, was already barred by limitation against respondents 3 and 4, sought to be impleaded in the main suit, is erroneous.

3. On the other hand, learned counsel for the respondents has assiduously argued that learned trial court has rightly dismissed the application of the petitioner, observing that the same has been filed just to delay proceedings in the main suit after the expiry of period of three years. The learned trial court has rightly observed that relief sought in the main suit is barred by limitation against the respondents sought to be impleaded in the main suit. In support of his arguments, learned counsel for the respondents has placed reliance upon the judgments in Smt. Anguri Devi and others versus Vikas Bajaj, 2015(5) R.C.R. (Civil) 646; Om Parkash versus Darshan Singh, 2003(4) R.C.R. (Civil) 845 and Mumbai International Airport Private Limited versus Regency Convention Centre and Hotels Private Limited and others, 2010 AIR (SC) 3109.

4. Having given thoughtful consideration to the submissions raised by learned counsel for the parties, this court is of the view that the revision is liable to be allowed for the reasons to follow:-

5. It is worth mentioning that after the execution of the alleged agreement to sell dated 29.3.2010, said Balwinder Singh expired. The petitioner approached respondent nos. 1 and 2 to disclose the names of the legal heirs of deceased Balwinder Singh and also to get his shares mutated and transferred in the names of his legal heirs in the revenue record, so that

the sale deed could be executed on payment of balance sale consideration, but neither did they disclose their names nor performed their part of agreement to sell. Resultantly, the petitioner served a legal notice dated 3.8.2011 (Annexure P-8) upon respondents no.1 and 2 specifically mentioning that it has come to his notice that Balwinder Singh son of Gurpal Singh has since expired and they should disclose the names of his legal heirs and also convey them regarding the execution of the agreement to sell dated 29.3.2010 and bring them along with you for the execution of the sale deed on receipt of balance sale consideration.

6. In reply dated 11.8.2011 to the legal notice, the respondents completely refused to disclose the names of the legal heirs of deceased Balwinder Singh, which fact is clearly evident from its para no. 7, wherein respondent nos 1 and 2 specifically admitting the death of Balwinder Singh son of Gurpal Singh, denied the very execution of agreement to sell by him along with them in favour of the petitioner.

7. Thereafter, the petitioner filed a suit for possession by way of specific performance of agreement to sell dated 29.3.2010 executed by respondent nos 1 and 2 along with Balwinder Singh (since deceased) son of Gurpal Singh in his favour for agricultural land measuring 16 Kanals @ Rs.17,50,000/- per acre after adjusting earnest money of Rs.6,00,000/- paid by him to them, pleading that the date fixed for execution of the sale deed of agricultural land was 15.4.2011, but the respondents did not turn up to execute the sale deed on the above agreed date. The petitioner is still ready and willing to perform his part of agreement to sell dated 29.3.2010. In his plaint, the petitioner again specifically mentioned in head note of the plaint and para 6 as well that he had been requesting respondent nos. 1 and 2 to

disclose the legal heirs of deceased Balwinder Singh, vendor, and implead them as and when disclosed by respondent nos. 1 and 2.

8. Despite that, the respondents did not disclose the legal heirs of deceased Balwinder Singh in their written statement. After the evidence was closed by the petitioner, respondent Surjit Kaur, during her examination-in-chief, disclosed the names of wife and daughter of Balwinder Singh. Resultantly, the petitioner filed an application under order 1 Rule 10, CPC, for impleading Palwinder Kaur, wife and Kiran, daughter of deceased Balwinder Singh as necessary parties to the suit.

9. The application was contested on the grounds that the same was not maintainable being filed at the fag end of the trial; that the petitioner did not make any endeavour for the same in time; that the petitioner was negligent from the very beginning, therefore, he cannot be allowed to fill up a lacuna at this stage. On merits, denying the execution of agreement to sell between the parties and receipt of earnest money, dismissal of the application of the petitioner was sought, being barred by limitation.

10. Bona fides of the petitioner can be gauged from the memo of parties in the plaint, wherein it has been specifically mentioned in the title defendant no.3 deceased Balwinder Singh son of Gural Singh through LRs, defendant no.1 and 2 are already on the record, and if any other legal heirs of deceased Balwinder Singh, are to be disclosed by defendant nos.1 and 2. Therefore, the contention of the learned counsel for the respondents that from the very beginning, the petitioner had been negligent for not impleading the legal heirs of deceased Balwinder Singh in the suit, cannot at all be countenanced, for the reasons that the respondents did not disclose the names of the legal heirs of deceased Balwinder Singh at every stage of the

case or earlier to it, be it in the reply to the legal notice or the written statement submitted by them.

11. The moot point, in issue, with regard to impleadment of legal heirs of deceased Balwinder Singh is before this court, which, in my considered opinion, tilts in favour of the petitioner on account of the fact that respondent nos. 1 and 2, namely, Paramjit Singh son of Guralp Singh and Smt. Surjit Kaur wife of Guralp Singh were asked time and again to disclose the names of legal heirs of deceased Balwinder Singh, i.e., at the time of serving legal notice upon them and in the suit also, who was none else, but real brother of respondent no.1 and son of respondent no.2, but they did not disclose the same intentionally and deliberately.

12. The finding of the learned court below that it was an attempt on the part of the petitioner to fill up a lacuna in his case, which amounted to negligence on his part, does not find favour with this court for the simple reason that the legal heirs of the deceased Balwinder Singh are necessary parties to be impleaded in the main suit, to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, so as to avoid any further multiplicity of litigation between the parties.

13. That apart, the finding of the learned trial court that the relief sought in the main suit was already barred by limitation against the respondents proposed to be impleaded can not at all be said to be correct, inasmuch as the case is now at the stage of recording of the evidence of defendants and the suit is yet to be matured to decide. Therefore, the impleadment of legal heirs of deceased Balwinder Singh on the record would not, in any manner, affect the ultimate outcome of the suit.

14. The observation of the learned trial court that the claim against the

proposed defendants nos. 3 and 4 to be impleaded in the main suit was already barred by time as application for impleadment of legal heirs of deceased Balwinder Singh was filed after a delay of more than 4 years, is absolutely erroneous, in view of the fact that petitioner became aware of the names of the legal heirs only on 28.10.2015, when affidavit was tendered by Smt. Surjit Kaur for the first time disclosing the names of legal heirs of Balwinder Singh.

15 The facts and circumstances of the judgment in Smt Anguri Devi's case (supra) relied upon by learned counsel for the respondents are completely distinguishable from the facts of the present case. Therefore, no benefit of the same can be given to the respondents, in view of the fact that the petitioner moved application dated 29.2.2016 under order 6 Rule 17, read with Order 1 Rule 10, CPC, well within limitation, inasmuch as legal heirs of deceased Balwinder Singh were disclosed for the first time by defendant-respondent no.2 in her affidavit tendered in affirmative evidence in court on 28.10.2015 despite making repeated efforts by the petitioner, asking the respondents on several occasions to disclose the legal heirs of deceased Balwinder Singh. Immediately thereafter, within four months, the petitioner moved the above-referred application for impleading legal heirs of deceased Balwinder Singh, namely, Palwinder Kaur widow and Kiran daughter in the main suit well within limitation.

16 Reliance placed by learned counsel for the respondents upon the judgment in Om Parkash's case (supra) has no relevance in the facts and circumstances of the case in hand, inasmuch as the suit against the legal heirs of deceased Balwinder Singh respondent no.3 is deemed to have been filed from the date of its institution and thus, is not barred by limitation.

17 The judgment relied upon by learned counsel for the respondents in **Mumbai International Airport Private Limited's case** (supra), is also not applicable to the facts of the present case, for the reason that each case has its own peculiar facts and circumstances on the basis of which, the same is decided independently. Therefore, no benefit of the same can be given to the respondents.

18 In view of the discussion made above, the revision is allowed. Consequently, the impugned order dated 12.12.2016 passed by the learned trial court is set aside. The trial court is directed to implead the legal heirs of deceased Balwinder Singh, namely, Palwinder Kaur, widow and Kiran, daughter, as defendant nos 3 and 4 in the suit and proceed further with the case, in accordance with law.

24th May, 2018
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether speaking/non-speaking | Yes/No |
| 2. | Whether Reportable | Yes/No |