

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R.No.2329 of 2018 (O&M)

Date of Decision: August 29, 2018

Resham Singh (since deceased) through L.Rs

...Petitioners

Versus

Shabegh Singh (since deceased) through L.Rs and others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

**Present: Mr. B.S. Bedi, Advocate,
for the petitioners.**

**Mr. Saurabh Bajaj, Advocate &
Mr. Ashmarya Bajaj, Advocate,
for the respondents.**

**Mr. G.S.Bajwa, Advocate with
Mr. R.K.Vashishtha, Advocate,
for applicants.**

AMIT RAWAL, J.

The present revision has been directed against the order dated 26.9.2017, whereby the suit qua defendant No.1- Resham Singh was not abated, rather he was deemed to be ex-parte as none of his legal heirs appeared or seemed to be interested in pursuing the case and the order dated 21.3.2018, whereby the application of the petitioners, who have not been impleaded as legal heirs of defendant No.1- Resham Singh, for setting-aside the ex-parte proceedings, has also been dismissed.

Mr.B.S.Bedi, learned counsel representing petitioners- Harpreet and Paramjit Singh claiming to be legal heirs of Resham Singh-defendant No.1 on the basis of the Will which was not opposed by the other daughters,

submitted that a civil suit bearing No.172 of 2010 titled as “Shabegh Singh and others Versus Resham Singh and others” claiming declaration with a consequential relief of permanent injunction was filed. During the pendency of the suit, Resham Singh died on 1.7.2015. An application was filed to bring on record the petitioners as legal heirs stating therein that the other daughters have no objections for their impleadment as legal heirs owing to the fact that they had admitted the Will, but the same had been dismissed being time barred. In support of the aforementioned contention, he referred to the provisions of sub-rule (3) of Rule 4 of Order 22 CPC and the amendment caused by this Court to submit that no limitation applies for bringing on record the legal heirs as it is the duty of the plaintiff to bring on record the legal heirs and in the absence of the same, suit cannot abate. The trial Court had remained oblivious of the aforementioned provisions. It should have adjudicated the application for impleadment at the first instance and later on should have proceeded ex-parte, but it has been done vice-versa, therefore, there is gross illegality and orders are without jurisdiction.

Mr.G.S.Bajwa, Advocate for the applicants, who have filed application for impleading them as respondents on the ground that they are newly added defendants in the suit, submitted that plaintiffs had not approached the Court with clean hands as an impression was given to the courts below that they were not aware of the pendency of the civil suit, but the application for impleading them as defendants was contested much earlier and despite that no application was filed and rightly so, the same has been dismissed.

It has been next contended that the suit was dismissed in default and the same has been restored, therefore, the legal heirs of Resham

Singh would not have any objection to the same.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr.Bedi as the impugned orders are not sustainable in the eyes of law. For adjudication of the lis aforementioned, it would be appropriate to reproduce the amendment of this court in the aforementioned provisions.

The same reads thus:-

“Punjab, Haryana and Chandigarh.- (i) In its application to the State of Punjab, Haryana and Chandigarh, the following shall be substituted for the existing sub-rule (3) to Rule 4 of Order XXII where within the time limited by law no application is made under sub-rule (1) the suit shall not abate as against the deceased defendant and judgment be pronounced notwithstanding the death and shall have the same force and effect as it had been pronounced before the death took place.”

(ii) The following shall be inserted as sub-rule (4), (5) and (6) to Rule 4 of Order XXII:

“(4) If a decree has been passed against a deceased-defendant a person claiming to be his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware of the suit or that he had not intentionally failed to make an application to bring himself on the record, the Court shall set aside the decree upon such terms as to costs or otherwise as it thinks fit.”

“(5) Before setting aside the decree under sub-rule (4) the Court must be satisfied prima facie that had the legal representative been on the record a different result might have been reached in the suit.”

“(6) The provisions of Section 5 of the Indian Limitation Act (36 of 1963) shall apply to applications under sub-rule (4).”

It has been explained that in the absence of impleadment of the legal heirs, the suit would not abate as against the deceased defendant and judgment be pronounced notwithstanding the death. It is not the case where the dispute is amongst the legal heirs of Resham Singh as except Harpreet and Paramjit Singh, there are other legal heirs also. Be that as it may, in my view, the trial Court ought not to have rejected the application being time barred owing to the aforementioned amended provisions of the Civil Procedure Code done by the High Court. Resultantly, the impugned orders are set-aside. The petitioners are brought on record as legal heirs of Resham Singh- defendant No.1 for the purpose of the adjudication of the lis in a pending suit, which is stated to have been restored.

Mr.Bedi states that he would not file any reply to the application for restoration of the suit. Keeping in view the aforementioned situation, it would be a farcical exercise in allowing the application for impleadment as respondents are the added defendants. They are at liberty to defend the suit in accordance with the stand taken in the written statement.

Revision petition stands allowed.

August 29, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No