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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6521 of 2016 (O/M)
Date of decision : 25.1.2018

Raj Singh since deceased through LR Petitioner

Versus

Ram Singh Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vaneet Soni, Advocate, for petitioner.

Mr. Onkar Rai, Advocate, for respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
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KULDIP SINGH J. (ORAL)

Impugned in present revision is the order dated 3.8.2017 (Annexure-P-7), passed by learned Civil Judge (Senior Division), Faridabad, vide which an application filed by present petitioner under Order 7 Rule 11 Civil Procedure Code, 1908, was dismissed.

I have heard the learned counsels for both the parties and have also carefully gone through the file.

It comes out that plaintiff-respondent filed a suit for declaration with a consequential relief of permanent injunction against Raj Singh son of Piyare Lal on 3.2.2012. In the said suit, the sale deed executed in year 2005 was challenged. In the cause of action clause, among others, it was stated that on 1.2.2012, defendant refused to accept his claim. Therefore, the suit is being filed.

Present petitioner filed an application before the trial Court that Raj Singh had died on 11.8.2010 i.e. about two years prior to filing of suit.

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Therefore, suit against a dead person is not maintainable. The trial Court dismissed the application holding that application was filed after four years and that plaintiff-respondent has no knowledge about death of defendant and it was a bonafide mistake.

I am of the view that law regarding filing of suit against a dead person is very clear. Suit against a dead person is not maintainable simply for the reason that no relief can be granted against a dead person. Even if, it is a bonafide mistake, appropriate remedy is to file a fresh suit against legal heir of defendant.

The learned counsel for respondent has stated that before the filing of present application, LRs of Raj Singh were impleaded.

However, I am of the view that in addition to filing a suit against a dead person, cause of action is stated to have arose on 1.12.2012 stating that on that date, defendant who was apparently dead, refused to accept his claim. Therefore, it needs amendment regarding cause of action clause also.

It being so, present revision is allowed and plaint having been filed against a dead person is rejected with liberty to plaintiff-respondent to file a fresh suit against legal heir of Raj Singh alongwith appropriate pleadings.

(KULDIP SINGH)
JUDGE

25.1.2018
sjks

Whether speaking / reasoned	:	Yes
Whether Reportable	:	No