

220.

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

CIVIL REVISION-8311-2014

Date of decision:17.04.2018.

MAN SINGH

... Petitioner

Versus

MOHAN LAL AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Pankaj Jain, Advocate,
for the petitioner.

Mr. Ashwani Gaur, Advocate, for
Mr. Rakesh Dhiman, Advocate,
for respondent No.1.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition under Article 227 of the Constitution of India for quashing the impugned order dated 04.09.2014 (Annexure P-1) passed by learned Civil Judge (Junior Division), Gurgaon vide which on an application filed under Order 22 Rule 4 CPC, the petitioner-defendant has been allowed to join the proceedings, but from the stage as on 04.09.2014 onwards. Petitioner has also prayed for setting aside the order dated 26.09.2014 (Annexure P-4) whereby the application filed by him seeking permission to file written statement has been declined by the trial Court.

Briefly stated, the respondent No.1-plaintiff has filed a suit for partition impleading all the defendants including defendant No.1-Balbir Singh and defendant No.2-Udeybir Singh. Defendant No.1-Balbir Singh, (father of the petitioner) died on 31.07.2012, whereas defendant No.2-

Udeybir Singh died on 19.01.2008. Accordingly, the petitioner, while claiming as LR of Balbir Singh (defendant No.1) has filed an application under Order 22 Rule 4 CPC and the trial Court though has allowed the application and allowed the petitioner to join the proceedings as LR of Balbir Singh, defendant No.1 but from the stage of passing of order dated 04.09.2014 only. After being allowed to be impleaded as an LR of defendant No.1, petitioner had filed an application seeking permission to file written statement in the case, but this prayer was declined by the learned Civil Judge (Junior Division), Gurgaon vide order dated 26.09.2014 on the ground that even defendants No.1 and 2 were proceeded ex parte at the initial stage of the suit and, therefore, the date on which the petitioner was allowed to join as LR of defendant No.1, ex parte proceedings had already been initiated and the defendant was already proceeded against ex parte from 28.02.2007. Accordingly, the petitioner has challenged two orders i.e. Annexures P1 and P4.

Learned counsel for the petitioner, while referring to judgment passed by Hon'ble Apex Court in **Vidyawati Versus Man Mohan and others-AIR 1995 Supreme Court 1653**, states that on the death of defendant, legal representative once impleaded as a party under Order 22 Rule 4(2) CPC, all the rights and defences become available to deceased defendant are available to the legal heirs as well. LRs of defendant have an independent right, title, interest in property and to set up their defence in the case.

On the other hand, learned counsel for the respondent has argued that since the deceased Balbir Singh was proceeded ex parte on 28.02.2007 and the petitioner was allowed to join the proceedings on

he was allowed to join proceedings.

I have heard learned counsel for the parties.

There is no doubt that the deceased-Balbir Singh died during the pendency of the suit and once the petitioner has been allowed to be impleaded as a legal heir of defendant No.1-Balbir Singh, this Court finds that he has a right to file his written statement also. Otherwise the very object for allowing the petitioner to be impleaded as a legal heir is mere formality.

In order to meet such situation, the Hon'ble Apex Court in **Vidyawati's case** (supra), has held as under:-

“4. This Court in [Bal Kishan vs. Om Parkash & Anr.](#) AIR 1986 SC 1952 has said thus (at P.1954):

"The sub-rule (2) of Rule of Order 22 authorised the legal representative of a deceased defendant to file an additional written statement or statement of objections raising all pleas which the deceased-defendant had or could have raised except those which were personal to the deceased-defendant or respondent."

5. The same view was expressed in [Jagdish Chander Chatterjee & Ors. vs. Sri Kishan & Anr.](#), 1973 (1) SCR 850: (AIR 1972 SC 2526 at Pp.2528-29) wherein this Court said:

"The legal representative of the deceased respondent was entitled to make any defence appropriate to his character as legal representative of the deceased respondent. In other words, the heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Indeed this does not prevent the legal representative from setting up also their own independent title, in which case there could be no objection to the court impleading them not merely as the LR's. of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on the title."

In view of **Vidyawati's case** (supra), this Court finds that once

account of death of defendant No.1-Balbir Singh, he has right to file written statement as well so as to set up his defence.

Accordingly, present revision petition is allowed and the petitioner is allowed one opportunity to file written statement. However, that would be subject to cost of ₹5,000/- to be paid to the respondent-plaintiff.

(HARI PAL VERMA)
JUDGE

17.04.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No