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

**Civil Revision No.3409 of 2018
Date of Decision: 23.01.2019**

UDHAM SINGH

.....Petitioner

Vs

SUKHDEV SINGH (DECEASED) AND ORS

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. N.S. Dandiwal, Advocate
for the petitioner.

Mr. Joginder Singh, Reader
for respondent No.1

Mr. I.S. Dhaliwal, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J. (Oral)

[1]. There is no representation on behalf of respondent No.2 despite service. Respondent No.2 is proceeded against *ex parte*.

[2]. Petitioner has preferred this revision petition against the order dated 23.04.2018 passed by the Civil Judge (Sr. Divn.) Moga vide which Sh. Joginder Singh Reader of the Court as an officer of the Court to represent the estate of deceased Sukhdev Singh/defendant No.1.

[3]. Plaintiff is real brother of deceased Sukhdev Singh defendant No.1. Defendants No.2 and 3 are the children of Pritam Kaur daughter of Mehar Singh. In a way, plaintiff is maternal uncle of defendants No.2 and 3. The suit was filed for declaration to the effect that the plaintiff is owner in possession of half share in the suit land as mentioned in headnote 'A' of the plaint, 1/4th share in the suit land as mentioned in headnote 'B' and 4/36th share in the suit land as mentioned in headnote 'C'.

[4]. Defendant No.1 was unmarried and issueless. Defendant No.1 has also set up a counter claim. The question arose before the trial Court as to whether in the absence of any Will/gift deed and any other documentary deposition made by defendant No.1, his property would devolve upon any legal heir and who would continue the counter claim filed by defendant No.1. Plaintiff being real brother of defendant No.1 and defendants No.2 and 3 being nephew and niece of deceased defendant No.1 have not filed any application for bringing them on record as legal representatives of deceased defendant No.1.

[5]. In view of Order 22 Rule 2-B CPC as inserted by way of amendment in Punjab, Haryana and Chandigarh vide Notification No.GSR39/CA5/1908/S12257 w.e.f. 11.04.1975, it was duty of the legal representative of the deceased defendant to bring themselves on record and it was not the duty of the

plaintiff, who is a *dominus litus*.

[6]. In the instant case, plaintiff claims himself to be legal representative of deceased defendant No.1, therefore, this situation may lead to some triable issues before the trial Court at the relevant stage.

[7]. Learned counsel appearing on behalf of deceased defendant No.1 filed an application under Order 22 Rule 4(A) read with Section 151 CPC for appointment of legal representative of the estate of deceased/defendant No.1, who was also the counter claimant.

[8]. The trial Court vide the impugned order dated 23.04.2018 accepted the application. Thereafter Sh. Joginder Singh, Reader of the Court was appointed as representative of deceased Sukhdev Singh/defendant No.1/counter claimant for the limited purpose of pursuing the case.

[9]. In my considered opinion, the aforesaid impugned order needs to be revisited by the trial Court in view of the fact that the provision can only be resorted to where there is no legal representative available on record. In such eventuality, the Court may proceed to consider the application under Order 22 Rule 4(A) CPC, if it appears to the Court that the defendant has no legal representative.

[10]. In the instant case, keeping in view the relationship

between the parties, I deem it appropriate to direct the trial Court to revisit the issue. Both the parties shall be at liberty to move their applications before the trial Court for their impleadment in the pending suit in accordance with law.

[11]. In the event of filing of such applications, by the parties, the trial Court shall be obligated to decide the applications strictly in accordance with law, without being influenced by any statement of fact made hereinabove. In any case, till disposal of such applications, the arrangement made vide the impugned order shall remain in force.

[12]. With the aforesaid observations, this revision petition is disposed of.

January 23, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No