

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

Date of Decision: 10.04.2019

1. CR No.7052 of 2017(O&M)

Ramesh Kumar Rana and another Petitioners

Versus

M/s KLJ Developers Pvt. Ltd. and othersRespondents

2. CR No.3102 of 2018(O&M)

**Mahender Singh since deceased through his LR
.....Petitioner**

Versus

M/s Cadillac Buildwell Pvt. Ltd. and othersRespondents

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

Present:Mr. Sanjay Mittal, Advocate
for the petitioners in both the cases.

Mr. M.K. Sood, Advocate
for respondent No.1 in both the cases.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.7062 of 2017 titled
Ramesh Kumar Rana and another Vs. M/s KLJ Developers Pvt.

CR No.7052 of 2017(O&M) and CR No.3102 of 2018(O&M)

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Ltd. and others and CR No.3102 of 2018 titled Mahender Singh since deceased through his LR Vs. M/s Cadillac Buildwell Pvt. Ltd. and others are being decided. Facts are being culled out from CR No.7052 of 2017.

[2]. Petitioners have preferred CR No.7052 of 2017 against the order dated 19.09.2017 passed by Additional Civil Judge (Senior Division), Gurugram vide which the application for impleading LRs of deceased Mahender Singh/defendant No.1 was disposed of.

[3]. Plaintiff filed a civil suit for recovery along with future interest against Mahender Singh (father of the petitioners) and others. Mahender Singh died on 05.11.2010. Plaintiff was aware of the death of Mahender Singh, but did not implead the legal representatives of Mahender Singh. Petitioner No.1 was serving in Indian Army and petitioner No.2 was living abroad. Petitioners were not aware of the pendency of the suit and the plaintiff did not move any application to implead them as necessary parties. The land has already been acquired by the State of Haryana vide award dated 20.06.2012 for the development of sector in urban estate, Gurugram. Petitioners moved an application for impleading them as legal representatives and the said application was dismissed/disposed of vide the impugned order.

[4]. In the original suit filed by the plaintiffs, they impleaded

only Mahender Singh and others. Mahender Singh died during pendency of the suit on 05.11.2010, leaving behind his six legal representatives, details of which are as under:-

“(i) Azad Singh Rana (adopted son of Krishan Lal)

(Azad Singh is already impleaded as defendant No.3).

(ii). Lt. General Ramesh Kumar Rana son of Mahender Singh resident of village and P.O. Bajghera, New Palam Vihar, Gurugram.

(iii) Mrs. Saroj Kumari D/o Mahender Singh, resident of H.No.78-A, village and P.O. Madangir, Delhi-62.

(iv) Asil Kumar Rana son of Mahender Singh, resident of Wight Wick Grove, Wolverhampton, West Midlands, UK, 68 BT.

(v) Sumitra Jakhar wife of Jagbir and D/o Sh. Mahender Singh R/o Gali No.9, Bhajanpura, Delhi-53.

(vi) Late Maj. Vinod Kumar Rana (deceased issueless) and his wife re-married with other person.”

[5]. The application was filed by petitioner No.1 for impleading LRs of deceased Mahender Singh on 30.08.2017.

[6]. Trial Court while disposing of the application came to the conclusion that Mahender Singh was proceeded against *ex parte* on 11.08.2015. At that time, he was being represented by Ms. Asha Barak, Advocate i.e. the same Advocate who has filed

the present application for impleading LRs of deceased Mahender Singh. The suit has reached the stage of defendants evidence. As per Order 22 Rule 2 Sub-Rule 2-A CPC, every Advocate appearing in the case who became aware of the death of a party to the litigation must give intimation of death of that party to the Court and to the person who is *dominus litis*. The factum of death of Mahender Singh ought to have been disclosed by the learned counsel for the defendants either to the Court or to the plaintiff. No such intimation was given to the Court and to the plaintiff and a dead person was proceeded against *ex parte*. As per requirement of Order 22 Rule 2 Sub Rule 2-B CPC, the duty to bring on record the LRs of deceased defendant shall be of heirs of the deceased and not of the person who is *dominus litis*. Since the decree is of recovery and the same can be executed by attachment or by sale of the property of the deceased judgment debtor, therefore, right to sue did not abate. Trial is at the fag end. Trial Court has disposed of the application on the premise that petitioner No.1 would be at liberty to join the proceedings at this stage as Azad Singh Rana is already defending the suit being defendant No.3. Other LRs of the deceased would also be at liberty to join the proceedings and there is no necessity to issue any notice to them.

[7]. At this stage, *inter se* dispute between the legal representatives cannot be appreciated. It is true that under Order 22 Rule 2 Sub Rule 2-A CPC, every Advocate appearing in the case after having knowledge about the death of a party was under obligation to give intimation of the death to the plaintiff (*dominus litis*). Ms. Asha Barak, Advocate was representing the defendants and she did not give any intimation to the plaintiff. Even otherwise, under Order 22 Rule 2 Sub Rule 2-B CPC, it was the duty of the legal representatives of the deceased defendant to come on record.

[8]. In **Charanjit Singh and another vs. Bharatinder Singh and others, 1987(1) PLR 403** and **Mohinder Kaur and another vs. Para Singh and others, AIR 1981 Punjab and Haryana 130(1)** it was held that the proper course for the Court would be to bring all the legal representatives on record so as to protect the interest of the property of the deceased for the ultimate benefit of legal representatives. In **Suresh Kumar Bansal vs. Krishna Bansal and another, (2010) 2 Supreme Court Cases 162**, the Hon'ble Apex Court has held that the provision in terms of Order 22 Rule 5 CPC is only for the purpose of bringing on record legal representatives of deceased for conduct of the legal proceedings only. Such a course would

avoid delay in disposal of the case. The observations made in para No.20 of the aforesaid judgment reads as under:-

“20. It is now well settled that determination of the question as to who is the legal representative of the deceased plaintiff or defendant under Order 22 Rule 5 of the Code of Civil Procedure is only for the purpose of bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicata and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings. If this is allowed to be carried on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefitted.”

[9]. It is a settled principle of law that all legal representatives are required to be brought on record irrespective of their *inter se* dispute which can be left to be decided in some appropriate Forum. Petitioner No.1 was serving as Lt. General in Indian Army in Northern-Eastern State till 2015. The application was filed by him alone. Even though, the factum of death of defendant was not brought to the notice of the Court and the plaintiff by the Advocate of the defendants at the relevant time, but still petitioners can be impleaded as legal representatives of deceased Mahender Singh as they cannot be

condemned unheard because liability arising out of decree would be answered by all the legal representatives of deceased defendant who have inherited the estate of deceased Mahender Singh.

[10]. Since the Court becomes *functus officio* only after pronouncement of the judgment, therefore, in my considered opinion, petitioners are required to be impleaded as legal representatives of deceased Mahender Singh and thereafter, the suit shall proceed in accordance with law.

[11]. In view of above, CR No.7052 of 2017 is allowed. Impugned order dated 19.09.2017 passed by Additional Civil Judge (Senior Division), Gurugram is set aside. Normal consequences to follow.

[12]. In CR No.3102 of 2018, petitioner has assailed the order dated 17.04.2018 passed by Additional Civil Judge (Senior Division), Gurugram vide which the application filed by the petitioner under Order 9 Rule 7 read with Section 151 CPC was dismissed.

[13]. In view of Order 22 Rule 4 CPC, there is no limitation for bringing on record the legal representatives of deceased defendant. In view of amendment to order 22 Rule 4 CPC by the High Court, the application filed by the LRs of the deceased defendant cannot be dismissed as time barred.

[14]. In the instant case, no such proposition is involved, but since the petitioners have been allowed to join the proceedings, therefore, to that extent indulgence is being granted that the petitioners are entitled to implead as legal representatives of deceased Mahender Singh.

[15]. This revision petition was ordered to be heard along with CR No.7052 of 2017. Since CR No.7052 of 2017 has direct bearing on merits of the present case, therefore, this revision petition is also allowed in view of findings recorded in CR No.7052 of 2017. Impugned order dated 17.04.2018 passed by Additional Civil Judge (Senior Division), Gurugram is accordingly set aside. Normal consequences to follow.

10.04.2019

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No