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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-.-

C.R. No. 885 of 2014 (O&M)
Date of decision:03.02.2020

Dalbir Singh

.. Petitioner

Vs.

Niranjan & Ors.

...Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present:- Mr. C.B Goel, Advocate, for the petitioner.

Mr. Surya Kant Gautam, Advocate, for respondent Nos. 2 to 4.

ALKA SARIN, J.

The present petition has been filed under 227 of the Constitution of India, challenging the order dated 21.01.2014 (Annexure P-2), vide which the application filed by the plaintiff-petitioner for impleading legal representatives of Defendant Nos. 8 and 11 in the suit, has been dismissed.

In brief the facts relevant to the present *lis* are that the plaintiff-petitioner filed civil suit under Order 1 Rule 8 of the Code of Civil Procedure (for short,'CPC') seeking a decree of declaration that order dated 27.05.1999 passed by the Tehsildar-cum-AC 1st Grade, Smalkha, District Panipat in case titled as “Niranjan etc. Vs. Pawan Singh etc.” as also the proceedings conducted by the Tehsildar-cum-AC 1st Grade are illegal and are not binding on the rights of the plaintiff-petitioner and further a decree for permanent injunction restraining the defendants from alienating the suit land in any

manner.

The suit was contested by the defendant-respondents, who filed their written statements on 18.09.2007 by raising a preliminary objection that Pawan and Khilla (Defendant Nos. 8 and 11) had expired before the institution of the suit and that a suit against a dead person was not maintainable.

On 17.01.2014, the plaintiff-petitioner moved an application under Order 21 Rule 1 (Rules 1 to 4) CPC read with Section 151 C.P.C for impleading the legal representatives of Defendant No. 8 - Pawan Singh and Defendant No.11 Khilla. The application was contested by the defendant-respondents on the ground that the same had been filed after a period of more than 6 years of their raising the objection qua filing of the suit against defendant Nos. 8 and 11, who had expired before the institution of the suit itself.

The application for impleadment, as is clear from the impugned order, was filed when the case was pending for rebuttal evidence and arguments. The trial Court dismissed the said application. Hence the present revision petition challenging the said order.

Section 21 of the Limitation Act, 1963 (for short,'the Act') reads as under:-

“21. Effect of substituting or adding new plaintiff or defendant:-

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”

Learned counsel for the petitioner has placed reliance upon **2005(4) RCR (Civil) 806, Dhan Singh Vs. Gurdev Kaur & Ors.**

The substitution of a party would be governed by the provisions of Section 21 of the Act. A plain reading of Section 21(1) of the act reproduced above makes it clear that against the newly added parties the suit would be deemed to have been instituted when he or she was so added. The proviso to Section 21 deals with a case where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith. Section 21(2) states that nothing laid down in Section 21(1) would apply where a party is added owing to assignment or devolution of any interest during the pendency of the suit. Hence this is a clear case which would be governed by the provisions of Section 21(1) of the Act.

Though there has been an inordinate delay on the part of the plaintiff-petitioner in filing the present application for bringing on record all the legal representatives of defendant Nos. 8 and 11, however in order to

impart complete justice I am of the opinion that the application ought to have been allowed. I find support for the conclusion drawn from the judgment rendered in the case of **Dhan Singh (Supra)** However, it would always be open to the newly impleaded parties i.e. legal representatives of Defendant Nos. 8 and 11 to raise the plea of limitation inasmuch as per provisions of Section 21(1) of the Act, the suit against them would be deemed to be instituted on the date that they were added.

In view of the above, I allow the present revision petition and set aside the order dated 21.01.2014 (Annexure P-2). The application for impleadment of the legal representatives of Defendant Nos. 8 and 11 stands accordingly allowed. It will always be open to the newly impleaded defendants to raise the plea of limitation as well as all other pleas as available to them in law. Nothing stated in the order would be considered as an opinion on the merits of the case.

Revision stands disposed of accordingly.

February 03, 2020
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(ALKA SARIN)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No