

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

Civil Revision-2399-2020

Date of decision: - 01.04.2021

Jagdish Ram (since deceased) through LRs

....Petitioners

Versus

Onkar Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Ashok Giri, Advocate
for the petitioners.

Mr. Sandeep Kumar, Advocate
for the respondent.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present revision petition, the challenge is to the order dated 30.09.2020 by which the application filed by the petitioners under Order 7 Rule 11 for rejection of the plaint has been dismissed.

The factual matrix is that respondent-plaintiff filed a civil suit seeking permanent injunction against sole defendant-Sh. Jagdish Ram for restraining him from interfering in the possession of the respondent-plaintiff or creating any hindrance or obstruction in the peaceful use and enjoyment for irrigation of the fields of the respondent-plaintiff from the tubewell/electric motor connection. It is a matter of fact that during the pendency of the suit, sole defendant, namely, Jagdish Ram unfortunately died on 23.07.2020.

As the sole defendant-Jagdish Ram has died, the said fact was brought to the notice of learned Court below. The legal representatives of Sh. Jagdish Ram i.e. petitioners herein were brought on record and thereafter, an application was moved by the legal representatives under Order 7 Rule 11 CPC for the rejection of the plaint on the ground that the sole defendant against whom the averments were made in the civil suit has already died and as there are no allegations against the legal representatives and there is no prayer in the civil suit qua them, therefore, the plaint is liable to be rejected.

The said application has been rejected by the learned Court below by an order dated 02.09.2020 by noticing the fact that the legal representatives of the sole defendant-Jagdish Ram are to succeed his estate and therefore, the application filed by the legal representatives under Order 7 Rule 11 CPC is rejected. The said order is under challenge before this Court.

Learned counsel for the petitioners argues that in the present case, all the averments and the allegations were against the sole defendant-Sh. Jagdish Ram and the relief of injunction was also sought against Sh. Jagdish Ram, hence, after the death of the said sole defendant-Sh. Jagdish Ram, the suit cannot be proceeded further and the application filed by the petitioners under Order 7 Rule 11 CPC has wrongly been rejected.

Learned counsel for the petitioners submits that in the absence of any allegations or prayer against the legal representatives of Sh. Jagdish Ram, the suit filed by the respondent-plaintiff cannot

continue.

Learned counsel for the respondent-plaintiff concedes before this Court that in the suit, Sh. Jagdish Ram was the sole defendant and the prayer of the respondent-plaintiff was also against the said Sh. Jagdish Ram in respect of interfering in the joint possession of the respondent-plaintiff and also from restraining the said Sh. Jagdish Ram from forcibly dispossessed the respondent-plaintiff or creating any hindrance or obstruction in the peaceful use and enjoyment of the property by the respondent-plaintiff. It is further conceded that as of now in the civil suit there is no prayer seeking any relief qua legal representatives of Sh. Jagdish Ram.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Learned counsel for the respondent-plaintiff has not been able to justify the continuation of the civil suit as to once there are no averments against any of the legal representatives of the sole defendant-Jagdish Ram or there is no prayer against them in the civil suit, how the suit can proceed further. Learned counsel for the respondent, at this stage, prays that the respondent-plaintiff be granted permission to file an appropriate suit against the legal representatives of the deceased defendant Sh. Jagdish Ram, who are to succeed his estate in case respondent-plaintiff is aggrieved in any manner qua legal representatives of Sh. Jagdish Ram.

In case, the respondent-defendant is aggrieved in any manner against any of the legal representatives after the death of the sole

defendant-Jagdish Ram, the respondent-plaintiff has a full right to initiate appropriate proceedings against the legal representatives of the sole defendant-Jagdish Ram, who has already died. No permission of the Court is needed to initiate any proceedings against the legal representatives of Sh. Jagdish Ram, if respondent-plaintiff is aggrieved against them in any manner.

Keeping in view the above facts and circumstances, after the death of the sole defendant-Jagdish Ram and the nature of the present suit, the same cannot continue and hence, the rejection of the prayer of the petitioners as raised in the application filed under Order 7 Rule 11 CPC, vide impugned order dated 30.09.2020 cannot be sustained and the said application is allowed and the plaint filed by the respondent-plaintiff against sole defendant-Sh. Jagdish Ram, who has unfortunately already died, is rejected keeping in view the facts & circumstances noticed above.

It is made clear that the respondent-plaintiff will be within his jurisdiction to initiate any proceedings against legal representatives of sole defendant-Jagdish Ram, who are to succeed his estate in case he is aggrieved in any manner against them.

Present revision petition stands allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

April 01, 2021
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	No