

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR- 6966 of 2015 (O&M)
Date of decision: 28.10.2022

M/s Bhargav Builders Pvt. Ltd. ..Petitioner
Versus

Baldev Singh and others ..Respondents

CR-1224 of 2018 (O&M)

M/s Bhargav Builders Pvt. Ltd. ..Petitioner
Versus

Baldev Singh and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. V.K.Sandhir, Advocate,
for the petitioner.

Mr. Prateek Mahajan, Advocate, and
Mr. Trideep Sharma, Advocate
for respondent no.2,4,5,6,7, 8 and 11

Ms. Ramneek Kaur Sandhu, Advocate
for respondent no.1, 4,5,6,7,8 and 11 (in CR-1224-2018)

ANIL KSHETARPAL, J(Oral)

1. Two identical suits for grant of possession by way of specific performance of the agreement to sell with a consequential relief of permanent injunction and in the alternative, for recovery of refund of earnest money were filed. In both the suits, as many as 11 defendants were impleaded. On notice being issued to the defendants, it was reported that late Sh. Kulwant Singh defendant no.3 died on 13.12.2010 i.e before the filing of the suit. Various applications were filed by the plaintiff as well as the defendants. The plaintiff filed an application under Order 1 Rule 10 CPC read with Order XXII Rule 4 CPC for permission to bring on record

the legal representative of defendant no.3, whereas, various other defendants filed applications for dismissal of the suit qua defendant no.3. The trial Court, by two identical orders, has dismissed the application filed by the plaintiff on the ground that the application was not filed within reasonable time, whereas, the applications filed by the defendants to dismiss the suit qua defendant no.3 have been allowed while declaring that the suit qua defendant No.3 stands abated.

2. The learned counsel representing the parties are ad-idem that an application under Order 1 Rule 10 CPC is maintainable in a situation where if there are more than one defendant in the suit and out of them, one has already died before the filing of the suit. The Hon'ble Supreme Court in **Pankajbhai Rameshbhai Zalavadia vs. Jethabhai Kalambhai Zalavadiya (Deceased) through LRs and others, JT 2017 (9) SC 429**, has also formed the same opinion.

3. In view of the aforesaid discussion, the order of the trial court rejecting the application of the plaintiff is liable to be set aside.

4. However, there is another issue which has been hotly debated and arises in the present case as well. The learned counsel representing the defendants submits that the objection with regard to maintainability of the suit, on the ground of limitation, with respect to the newly added legal representative of defendant no3 should be decided at this stage itself.

5. This court has considered the submission.

6. For deciding such an objection, the plaintiff is required to be given an opportunity to lead evidence. In such circumstances, it would be more appropriate if the trial court is directed to frame a distinct issue on the question of limitation and decide the same along with the final decision in

the suit. This will obviate the leading of evidence at two different stages.

7. Needless to observe that the court shall examine the maintainability of the suit against the newly brought on record legal representatives of late Sh. Kulwant Singh in terms of Section 21 of the Limitation Act, 1963.

8. Keeping in view the aforesaid facts, two identical orders passed by the trial court on 18.05.2015 are set aside. The application filed by the plaintiff under Order 1 Rule 10 shall stand allowed, whereas the applications filed by the defendants to dismiss the suit qua defendant no.3 shall stand dismissed subject to the observations made by this court.

9. Disposed of accordingly.

10. All the pending miscellaneous applications, if any, are also disposed of.

October 28, 2022

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(ANIL KSHETARPAL)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>