

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

CR-8289-2016 (O&M)

Date of decision: 31.10.2022

Joginder Pal

...Petitioner

Versus

Ravi Pal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms.Rupinder Kaur Thind, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

Challenging the correctness of the concurrent orders passed by the trial court as well as the First Appellate Court while dismissing an application under Order IX Rule 13 of the Code of Civil Procedure, 1908, the present revision petition has been filed. The petitioner claims to be daughter of late Sh.Joginder Pal. After the death of Sh.Joginder Pal, it has come on record that Sh.Kuldeep Kumar, her brother, filed an application before the court for an adjournment. Thus, the court has held that the estate of late Sh.Joginder Pal was represented and they were in knowledge of the pendency of the suit. As per amendment dated 11.04.1975 in Order XXII Rule 2-B of the Code of Civil Procedure, 1908, it is the responsibility of the legal heirs of the defendant in a pending suit, to come on record. An Advocate is only required to inform about the death of a party to the court. The amendment is extracted as under:-

“2-A. Every Advocate appearing in a case who becomes aware of the death of a party to

the litigation (whether he appeared for him or not) must give intimation about the death of that party to the Court and to the person who is dominus litis.”

2-B. The duty to bring on record the legal representatives of the deceased-defendant shall be of the heirs of the deceased and not of the person who is dominus litis.”

Further sub rule (3) to rule 4 was substituted and sub rules (4), (5) and (6) to rule 4 were also added by the Hon'ble Punjab and Haryana High Court vide notification published on 11.04.1975 which provides as under:-

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall be not abate as against the deceased- defendant and the judgment may be pronounced notwithstanding his death which shall have the force and effect as if it has been pronounced before the death took place “

(4) If a decree has been passed against a deceased-defendant a person claiming to be his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware of the suit or that he had not intentionally failed to make an application to bring himself on the record, the court shall set aside the decree upon which terms as to costs or otherwise as it thinks fit.

(5) Before setting aside the decree under sub rule (4) the court must be satisfied prima facie that had the legal representative been on the record a different result might have been reached in the suit.

(6) The provisions of section 5 of the Limitation Act, 1963 shall apply to application under

sub rule(4).”

Therefore, both the courts have formed an opinion that the estate of late Sh.Joginder Pal was duly represented.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Hence, dismissed.

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

31.10.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE