

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

291

1)

**CR-3342-2019
Decided on : 05.07.2022**

Arun Kumar Lakhanpal

. . . Petitioner(s)

Versus

Batman Executive Committee and others

. . . Respondent(s)

2)

**CR-4115-2019
Decided on : 05.07.2022**

Arun Kumar Lakhanpal

. . . Petitioner(s)

Versus

Batman Executive Committee and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. B.D. Sharma, Advocate
for the petitioner(s).

Mr. K.S. Dadwal, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J. (ORAL)

This order shall dispose of CR-3342-2019 and CR-4115-2019, as the issue involved in both the petitions is identical. However, the facts are being extracted from CR-3342-2019.

The present revision petition(s) have been preferred by the petitioner/defendant No.1 to impugn the order dated 07.03.2019 (Annexure P-5), passed by the learned Civil Judge (Jr. Divn.), Ajnala, vide which the application moved by him under Section 151 CPC for dismissal of the suit instituted by respondent No.1/plaintiff-Society, on account of the death of the plaintiff late Kailash Chander Sharma, was dismissed.

Learned counsel for the petitioner(s) submits that the trial Court while passing the aforementioned impugned order committed grave

illegality by not appreciating that in the changed circumstances i.e. on account of the death of Kailash Chander Sharma, the continuation of the suit would be nothing but an abuse of the process of law.

Learned counsel further submits that the suit in question was filed by plaintiff late Kailash Chander Sharma for declaring him as President, however, since the plaintiff had died in October, 2018, the suit had been rendered infructuous and the alleged cause of action no longer subsisted. He further submits that the trial Court erred in impleading Kans Raj Salwan as plaintiff in place of late Kailash Chander Sharma even though the suit in question was filed by the latter in his personal capacity.

Learned counsel for the respondent(s) on the other hand, while controverting the submissions made by the counsel opposite, submits that the suit had not been filed by Kailash Chander Sharma in his personal capacity but had been filed by the plaintiff-Society through late Kailash Chander Sharma, as its authorized representative. Learned counsel further submits that in the circumstances, it was evident that the suit which had been instituted by late Kailash Chander Sharma was only in his capacity as the President of the plaintiff-society. His death, therefore, would not have in any manner rendered the suit in question, infructuous.

I have heard learned counsel for the parties and perused the material on record.

The case of the petitioner in brief is that the suit was filed by late Kailash Chander Sharma as plaintiff in his personal capacity and subsequent to his death, cause of action did not survive. However, this plea of the petitioner is devoid of any merit and deserves to be rejected. A perusal of the plaint, which has been annexed as Annexure P-1 along with

the instant revision petition reveals that the suit had been filed by the society namely “Batman Executive Committee of Thakurdwara Bal Bawa Tehsil Ajnala, District Amritsar, Regd. No. 1100 of 1978-1979” (hereinafter referred to as 'the Society') through its President i.e. late Kailash Chander Sharma. Therefore, there can be no manner of doubt that the plaintiff in the suit was the “Society” and not late Kailash Chander Sharma, as pleaded by the petitioner/defendant No.1.

It would be apposite to reproduce the prayer clause and the relevant portions of the plaint filed before the trial Court:-

*“Suit for declaration to the effect that Kailash Chander Sharma is the President of the **plaintiff Society** and the members of the office bearers as the list for the year 2014-2015 has been duly approved by the Registrar of Firms and Societies Punjab Chandigarh under the Societies Registration Act XXI of 1860 vide certificate dated 30.05.2014 and **plaintiff Society** is being managed by its governing body duly elected vide resolution dated 21.03.2014 and the list submitted by the defendants before the authority is illegal and the certificate issued to the defendants dated 10.07.2014 is illegal and is liable to be set aside and the defendants have got no right in the management of the **plaintiff society**. And for permanent injunction restraining the defendant or their agents attorney and with the help of police from interfering in the management of the **plaintiff society** wrongly and illegally, forcibly in any manner.*

xxx xx xxx xx

*1. That the **plaintiff society** has been registered with the Registrar of Firms and Societies Punjab Chandigarh under the Societies Registration Act XXI of 1860 registered No.1100 for the year 1978-79. Shri Kailash Chander Sharma is duly authorized to file the present suit.*

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xxx xx xxx xx

6. That the defendants are threatening to interfere in the functioning of the society and in the management of the society wrongly and illegally. The defendants have got no right title or interest in the management of the **plaintiff society**.

xxx xx xxx xx

xxx xx xxx xx

7. That Shri Kailash Chander Sharma is duly elected as a president of the **plaintiff society** has got every right to manage the same.”

A bare perusal of the above extracts along with the prayer clause leaves no manner of doubt that late Kailash Chander Sharma, was neither the plaintiff nor was the suit in question instituted by him in his personal capacity. Thus, on account of the death of the representative of the plaintiff-Society i.e. Kailash Chander Sharma, the cause of action would not cease to exist and the suit would not have been rendered infructuous.

Still further, the respondent-Society was well within its right to appoint an authorized representative for pursuing the civil suit in question. A perusal of the impugned order dated 02.11.2018 (Annexure P-5 in CR-4115-2019), clearly reveals that the members of the Society elected Kans Raj Salwan, as its President and he was, in this capacity as such, appointed as its authorized representative to pursue the Civil Suit in question, in place of late Kailash Chander Sharma.

Though the learned counsel for the petitioner has even challenged the legality of the election of the Kans Raj Salwan as President of the Society, however, this Court would refrain from commenting upon the same, as it cannot go into the question of legality or otherwise of the

election of the President of the Society.

As a sequel to the above, these civil revisions being devoid of merits are hereby dismissed. It is, however, made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

July 05, 2022
J.Ram

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