

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

124

**CR No. 4566 of 2022
Date of decision : 18.10.2022**

Kulwinder Singh**.....Petitioner****Vs.****Balwinder Singh (deceased) through LR and others Respondents****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Naresh Prabhakar, Advocate, for the petitioner

TRIBHUVAN DAHIYA, J. (Oral)

1. This revision petition has been filed under Article 227 of the Constitution of India for setting aside two orders dated 30.8.2022 (Annexures P-5 and P-6). By the first order (P/5), respondent/Savita Rani has been ordered to be impleaded as legal representative of deceased plaintiff/Balwinder Singh under Order XXII Rule 5 CPC; and by the second order (P/6), application filed by the petitioner/defendant no.2 for dismissal of the suit as having been abated, due to plaintiff's death, has been dismissed.

2. The facts of the case in brief are, a suit for declaration was filed by the plaintiff /Balwinder Singh, *inter alia*, claiming the suit property to be ancestral co-parcenary property of Hindu Undivided Family so far as the share of defendant no.1 was concerned. During pendency of the suit plaintiff died on 30.6.2021. An application was filed by applicant/respondent Savita Rani to be impleaded as legal heir, claiming herself to be the plaintiff's widow, having been married to him as per Sikh rites and ceremonies after dissolution of her previous marriage. Prior thereto, she was married to some

other person, and a son Lovepreet Singh and a daughter were born to her from the previous marriage. The previous husband deserted the applicant, and later their marriage was mutually dissolved. It was also pleaded that she was the only surviving legal heir of the plaintiff, being her widow. She was living with the plaintiff as his wife, and her name was entered in the ration card of the village as the plaintiff's wife. Similarly, in the voter I-card also, she is duly recorded as his wife, as also in her bank account in the Punjab National Bank. It has further been averred that the plaintiff himself had an account in Oriental Bank of Commerce in which he had made respondent's son as a nominee. Supporting documents to these averments were also placed on record. Therefore, being widow she claimed the right to prosecute the suit in question against the defendants.

3. This application for impleading legal heir was contested by the defendants, including the petitioner/defendant no.2, alleging that Savita Rani was not the plaintiff's legal representative as she was not his legally wedded wife. No marriage certificate was produced by her. It was also stated that the documents produced on record by her in support of the pleadings, were false and fabricated.

4. Considering all the relevant material/documents placed on record, the trial Court held that *prima facie* it was established respondent/applicant Savita Rani was residing with late Balwinder Singh as his wife, and ordered her to be impleaded as his legal representative.

5. On account of the application for impleading the applicant/respondent as legal representative of the deceased plaintiff having been allowed by the order dated 30.8.2022 (P-5), the second application filed by the petitioner/defendant no.2 for dismissal of the suit as having been abated after plaintiff's death, was dismissed on that account vide order dated

30.8.2022 (Annexure P-6).

6. Learned counsel for the petitioner contends that the respondent/applicant was not the legal heir of deceased plaintiff and could not have been so impleaded. There is no material on record to establish that she was legally wedded wife of the deceased. He further contends that a detailed enquiry by leading of evidence was a must before impleading a legal representative which was not done. Therefore, the impugned orders are unsustainable.

7. Proceedings under Order XXII Rule 5 CPC are summary in nature, undertaken to form a *prima facie* opinion for the limited purpose of representing the deceased's estate for adjudicating the *lis*. That is the reason no detailed enquiry is needed under these proceedings, as only a *prima facie* view is to be taken for the limited purpose. In the instant case also, the trial Court after hearing the parties and examining the documents on record formed its opinion and ordered respondent/applicant to be impleaded as legal representative of the deceased plaintiff, being his widow. This is for the limited purpose of representing the plaintiffs' estate to adjudicate the suit. It will not confer upon her any right to the suit property as against claims of the defendants/rival claimants to the deceased's estate.

8. The aforesaid view is as per the law laid down by the Supreme Court in ***Jaladi Suguna (dead) through Lrs v. Satya Sai Central Trust and others, 2008 (8) SCC 521***. Para 10 of the judgment reads as under:

10. Filing an application to bring the legal representatives on record, does not amount to bringing the legal representatives on record. When an LR application is filed, the court should consider it and decide whether the persons named therein as the legal representatives, should be brought on record to represent the estate of the deceased. Until such decision by the court, the persons claiming to be the legal representatives have no right to represent the

estate of the deceased, nor prosecute or defend the case. If there is a dispute as to who is the legal representative, a decision should be rendered on such dispute. Only when the question of legal representative is determined by the court and such legal representative is brought on record, it can be said that the estate of the deceased is represented. The determination as to who is the legal representative under Order 22 Rule 5 will of course be for the limited purpose of representation of the estate of the deceased, for adjudication of that case. Such determination for such limited purpose will not confer on the person held to be the legal representative, any right to the property which is the subject matter of the suit, vis-a-vis other rival claimants to the estate of the deceased.

9. In view of the aforesaid analysis, it is apparent that the applicant/respondent has been rightly impleaded as legal representative for the limited purpose; and the suit, therefore, cannot be said to have abated. There is no ground to interfere with the impugned orders passed by the trial Court.

10. Dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

18.10.2022

Ashwani

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No