IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

317 **CR-1936-2010 (O&M)**
Date of Reserve: 01.09.2023.
Date of Pronouncement: 19.09.2023.

Ajit Pal Singh ...Petitioner.

Versus

Amandeep Singh and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Anil Chawla, Advocate for the petitioner.

Mr. Vishal Sodhi, Advocate for the respondents.

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Sukhvinder Kaur, J.

By way of present revision petition, the petitioner/plaintiff has challenged the order dated 30.11.2009 passed by the learned Additional Civil Judge (Senior Division), Amritsar, whereby an application under Order I Rule 10 CPC, Order XXII Rule 4, Order VI Rule 17 CPC read with Section 151 CPC, seeking impleadment of LRs of defendant No.2-Mohinder Kaur and consequential amendment in Para No.5 of the plaint, was dismissed.

2. The brief facts as per revision petition are that the petitioner filed a suit for recovery of Rs.4,65,000/- as refund of advance and interest thereon, on the ground that Shamsher Singh (defendant No.1) representing himself to be lawful attorney of Mohinder Kaur (defendant No.2) (both since deceased), vide registered Power of Attorney dated 14.05.1992, entered into an agreement to sell dated 04.07.1997 in favour of petitioner/

plaintiff for sale of plot bearing No.E-252, Ranjit Avenue, Amritsar, having area of 300 square yards, which was allotted to deceased-Mohinder Kaur, vide allotment order dated 27.02.1992 of Improvement Trust, Amritsar, being a local displaced person. The said plot was agreed to be sold at the rate of Rs.3100/- per square yards and out of the total sale consideration, Rs.3,00,000/- were paid as earnest money and remaining amount was agreed to be paid at the time of execution and registration of sale deed on 25.07.1997. It was agreed that in case of failure to execute the sale deed on the part of defendants, they would refund advance of Rs.3,00,000/- besides Rs.3,00,000/- as damages. Necessary expenses for registration of sale deed were agreed to be paid by the petitioner/plaintiff. The petitioner/plaintiff remained ready and willing to perform his part of contract and appeared before the Sub Registrar, Amritsar, with the balance sale consideration and sworn affidavit on 25.07.1997 but none of the defendants turned up to execute the sale deed. On 28.10.1997, defendant No.2 through defendant No.1 served a Legal Notice upon petitioner/plaintiff that they were ready to execute the Power of Attorney on payment of balance sale consideration. Reply dated 11.11.1997 to the legal notice was sent through their counsel asking defendants No.1 and 2 to pay the balance dues payable to the Improvement Trust i.e. Rs.87,000/- and to get Conveyance Deed executed in his favour. The petitioner/plaintiff again got served legal notice dated 22.02.2000 asking defendants No.1 and 2 to get execute the Conveyance Deed of the plot from the Improvement Trust and he was still ready and willing to perform his part of the contract. Defendants were also intimated that in case of failure on their part to do the needful, the petitioner/plaintiff would be forced to file suit for recovery of double of the amount of earnest money. Therefore, despite these notices, when defendants failed to perform their part of contract, the petitioner/plaintiff filed suit for recovery.

3. Notice of the suit was duly served upon defendant No.1, whereas notice issued to defendant No.2 was received with the report that she had died. Immediately thereafter, the petitioner/plaintiff filed application dated 08.09.2000 for impleading LRs of defendant No.2-Mohinder Kaur and to amend the plaint by amending para No.5 of the plaint to that extent. The application was contested by the defendants mainly on the ground that the same was time barred.

4. After hearing arguments, learned Trial Court dismissed the application. Hence, this revision petition.

5. Learned counsel for the parties have been heard and with their assistance the record of the case has also been perused.

6. Learned counsel for the petitioner has contended that the entire approach of learned Trial Court suffers from illegality and irregularity in the exercise of the jurisdiction. Trial Court while dismissing the application failed to take into consideration the settled position of the law that the question of limitation is mixed question of law and fact and the question of limitation should have been framed and LRs of defendant No.2 should have been impleaded. It has been further contended that it is well settled preposition of law that Order XXII Rule 4 CPC does not decide the rights of the parties. The date of execution of sale deed by seller from the Improvement Trust was fixed as 25.07.1997 and on the said date the original Power of Attorney was also to be taken from the seller and on the

said date the seller/ Mohinder Kaur did not turn up and served the legal notice through her attorney Shamsher Singh upon the petitioner on 28.10.1997, asking the petitioner to pay the balance consideration and get executed the Power of Attorney only, as no conveyance deed had been executed and granted seven days extra time for fixing the date of performance/ execution of Power of Attorney. The petitioner replied the legal notice dated 28.10.1997 on 11.11.1997 asking the defendants to clear the dues of the Improvement Trust, Amritsar amounting to Rs.87,000/- and to get executed the sale deed. He has urged that in view of these sequence of events, the defendants by serving the notice dated 28.10.1997 made the novation of the contract, thereby asking the petitioner to accept the performance through Power of Attorney. So, the starting point of limitation has to be 28.10.1997. It has also been contended that at no point of time after serving of the notice dated 28.10.1997 and legal notice dated 22.02.2000, disclosed about death of Mohinder Kaur. So the present suit was filed against Mohinder Kaur, a dead person inadvertently and in the absence of knowledge of her death. As such this suit is not a nullity and application filed for impleading the legal heirs of the deceased defendant-Mohinder Kaur is maintainable and the question of limitation if any can be raised by the legal heirs and since the present application was filed on 08.09.2000, the same is within the limitation. He has submitted that the order of the trial Court regarding dismissing the application for impleading LRs of Mohinder Kaur defendant No.2 is illegal, as on the same date trial Court allowed the application for impleading LRs of Shamsher Singh-defendant No.1 (General Power of Attorney holder of Mohinder Kaur). He has contended that as such the present revision petition may be accepted by allowing the application filed by the petitioner for impleading LRs of Mohinder Kaur-defendant No.2 and the consequential amendment in the plaint and the impugned order dated 30.11.2009 may be set aside. In support of his contentions, he has relied upon ***Karam Kaur Vs. Dalip Singh (died) thorugh LRs and another,2002 (1) Revenue Law Reporter, 158.***

7. On the other hand, it has been contended by counsel for the respondents that Mohinder Kaur had died on 20.04.1999 much prior to the filing of the present suit. It is the duty of the plaintiff to find out the defendant and to give complete particulars regarding his identity and there is no provision of impleading of legal heirs of a person who was dead person at the time of the filing of the suit. He has also contended that when the amendment sought, defeats valuable right of limitation accrued to the respondent, then such amendment cannot be allowed. In this context, he has placed reliance upon ***Muni Lal Vs. Oriental Fire and General Insurance Co. Ltd., 1996, AIR (Supreme Court) 642; K Raheja Constructions Ltd and another Vs. Alliance Ministeries and others, 1995 AIR, SC, 1768*** and ***State Trading Corporation of India Ltd. Vs. K.V. Vaidyalingam and others, 1978 HLR 316.***

8. The trial Court had held that as per averments of defendants, Mohinder Kaur, had died on 20.04.1999, prior to the filing of the present suit. The present suit is for recovery on the basis of agreement to sell dated 04.07.1997. The date of execution of sale deed was fixed as 25.07.1997. The plaintiff made cause of action from 24.07.1997 and for suit for recovery, period of limitation is three years which expired on 24.07.2000. It

has been further held that the present application has been preferred by the plaintiff on 08.09.2000 after a period of three years and by relying upon *Muni Lal case (supra) and K. Raheja Constructions Ltd and another case (supra),* the trial Court has held that as valuable right of limitation accrued to the defendants, so the application filed by the plaintiff under Order I Rule 10, under Order XXII Rule 4 and under Order VI Rule 17 read with Section 151 CPC was dismissed.

9. The bare reading of Order XXII Rule 4 CPC makes it clear that Order XXII Rule 4 of the Code will apply only in the case where death of one of the several defendants or the sole defendant occurs during the subsistence of the suit. So if one of the defendants had expired prior to the filing of the suit, the legal representatives of such defendant cannot be brought on record in the suit under Order XXII Rule 4 of the Code.

10. The provision of Under Order I rule 10 of the Code enable the Court to add any person as a party at any stage of the proceedings, if the presence of such person in Court is necessary in order to enable the Court to effectively and completely adjudicate upon and to settle all the questions involved in the suit. Order I Rule 10 of the Code empowers the Court to substitute a party in the suit who is a wrong person with a right person. If the Court is satisfied that the suit has been instituted through a bona fide mistake, and also that it is necessary for the determination of the real matter in controversy to substitute a party in the suit, it may direct it to be done under Order I Rule 10 of the Code. Thus, Order I Rule 10 of the Code gives discretion to the Court for impleading such person in whose absence the Court feels that the controversy raised in the suit cannot be effectively and completely settled.

11. The question that when application Under Order XXII Rule 4 of the Code had been dismissed as not maintainable, then whether there is no bar for filing application under Order I Rule 10 of the Code, came from consideration before the Hon'ble Supreme Court in ***Pankajbhai Rameshbhai Zalavadia Vs. Jethabhai Kalabhai Zalavadiya (Deceased), 2017 (4) R.C.R. (Civil) 777,*** whereas it has been held by the Apex Court that:-

> *"In the matter on hand, though the trial court had rightly dismissed the application under Order 22 Rule 4 of the Code as not maintainable at an earlier point of time, in our considered opinion, it needs to be mentioned that the trial Court at that point of time itself could have treated the said application filed under Order 22 Rule 4 of the Code as one filed under Order 1 Rule 10 of the CPC, in order to do justice between the parties. Merely because of the non- mentioning of the correct provision as Order 1 Rule 10 of the Code at the initial stage by the advocate for the plaintiff, the parties should not be made to suffer. It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the Courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1 Rule 10 CPC speaks about judicial discretion of the Court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add any one as a plaintiff or defendant if it finds that such person is a necessary or proper party. The Court under Order 1 Rule 10(2) of the Code will of course act according to reason and fair play and not according to whims and caprice. The expression "to settle all questions involved" used in Order 1 Rule 10 (2) of the Code is susceptive to a liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject matter thereof. The Parliament in its wisdom while framing this rule must be held to have thought that all material questions common to the*

parties to the suit and to the third parties should be tried once for all. The Court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. There cannot be any dispute that the party impleaded must have a direct interest in the subject matter of litigation. In a suit seeking cancellation of sale deed, as mentioned supra, a person who has purchased the property and whose rights are likely to be affected pursuant to the judgment in the suit is a necessary party, and he has to be added. If such purchaser has expired, his legal representatives are necessary parties. In the matter on hand, since the purchaser of the suit property, i.e., defendant no.7 has expired prior to the filing of the suit, his legal representatives ought to have been arrayed as parties in the suit while presenting the plaint. As such impleadment was not made at the time of filing of the plaint in view of the fact that the plaintiff did not know about the death of the purchaser, he cannot be non-suited merely because of his ignorance of the said fact. To do justice between the parties and as the legal representatives of the purchaser of the suit property are necessary parties, they have to be impleaded under Order 1 Rule 10 of the Code, inasmuch as the application under Order 22 Rule 4 of the Code was not maintainable. As mentioned supra, it is only if a defendant dies during the pendency of the suit that the provisions of Order 22 Rule 4 of the Code can be invoked. Since one of the defendants i.e. defendant No.7 has expired prior to the filing of the suit, there is no legal impediment in impleading the legal representatives of the deceased defendant No.7 under Order 1 Rule 10 of the Code, for the simple reason that the plaintiff in any case could have instituted a fresh suit against these legal representatives on the date he moved an application for making them parties, subject of course to the law of limitation. Normally, if the plaintiff had known about the death of one of the defendants at the time of institution of the suit, he would

> *have filed a suit in the first instance against his heirs or legal representatives. The difficulty that the High Court experienced in granting the application filed by the plaintiff under Order 1 Rule 10 of the Code discloses, with great respect, a hyper-technical approach which may result in the miscarriage of justice. As the heirs of the deceased defendant no.7 were the persons with vital interest in the outcome of the suit, such applications have to be approached keeping in mind that the Courts are meant to do substantial justice between the parties and that technical rules or procedures should not be given precedence over doing substantial justice. Undoubtedly, justice according to the law does not merely mean technical justice but means that law is to be administered to advance justice. Having regard to the totality of the narration made supra, there is no bar for filing the application under Order 1 Rule 10, even when the application under Order 22 Rule 4 of the Code was dismissed as not maintainable under the facts of the case. The legal heirs of the deceased person in such a matter can be added in the array of parties under Order 1 Rule 10 of the Code read with Section 151 of the Code subject to the plea of limitation as contemplated under Order 7 Rule 6 of the Code and Section 21 of the Limitation Act, to be decided during the course of trial."*

12. In the instant case, at this stage, there is no material on record to suggest that the plaintiff had the knowledge about death of defendant No.2. The legal heirs of defendant No.2 have vital interest in the out come of the suit and their presence is necessary in order to determine the real matter in controversy between the parties. So keeping in view ratio of law in case supra the legal heirs of deceased Mohinder Kaur-defendant No.2 can be added in the array of parties under Order I Rule 10 of the Code read with

Section 151 of the Code, subject to the plea of limitation as contemplated under Order VII Rule 6 of the Code and Section 21 of the Limitation Act, to be decided during the course of trial.

13. In ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another, 2022(4) Law Herald (SC) 3241,*** it was held that :-

> *"It is well settled that the Court must be extremely liberal in granting the prayer for amendment, if the Court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the Court to allow an amendment if it is of the view that allowing of an amendment shall really sub serve the ultimate cause of justice and avoid further litigation."*

14. In ***Pankaja and another Vs. Yellappa (dead) by LRs and others, (2004) 6 SCC 415,*** it was held that :-

> *"The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case."*

15. This view has been followed by three Judges Bench of the Apex Court in case ***T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board (2004) 3SCC 392.***

16. So keeping in view the ratio of law laid down in the cases supra, the impugned order under revision suffers from patent illegality and irregularity and is not sustainable under law. So the present revision petition is allowed and the impugned order is set aside. Trial Court is directed to implead the legal representatives of deceased defendant No.2 and bring them on record, subject to the plea of the limitation as contemplated under Order VII rule 6 of the Code as well as under Section 21 of the Limitation Act, 1963 to be decided during the trial and consequently the amendment as prayed for to that extent is also allowed.

17. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

19.09.2023.
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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No