

CR-8276-2018 (O&M)

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

104+105

**CR-8276-2018 (O&M)
Decided on : 24.07.2023**

Gurmeet Singh and others

... Petitioner(s)

Versus

Harjinder Singh and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Vaibhav Sehgal, Advocate
for the petitioner(s).

Mr. Mr. Shehbaz Thind, Advocate
for respondent No.1.

SANJAY VASHISTH, J. (Oral)

1. Present revision petition is directed against the order dated 15.11.2017, passed by the Court of Civil Judge (Jr. Divn.), Ludhiana, whereby, suit *qua* defendant No.1 – Sarwan Singh (now deceased), has been dismissed on account of non-impleadment of legal representative(s) of defendant No.1.

2. Petitioners (hereinafter referred to as ‘plaintiffs’) instituted a suit for possession as owner by way of specific performance of the agreement to sell dated 06.08.1990, in respect of a plot measuring 600 sq. yards, comprised in Khasra No.890/2 as per Jamabandi for the year 2009-10, situated at Mundian Kalan and now known as Jeewan Nagar, Street No.21, Phase-III, Focal Point, Tehsil and District Ludhiana.

Said suit was instituted against (i) Sarwan Singh; (ii) Harjinder Singh, both sons of Gurnam Singh, resident of Mundian Kalan, Tehsil and District Ludhiana; and (iii) Kamal Parkash s/o Sardar Singh. Thus,

defendants No.1 & 2 are the real brothers and residents of the same village.

3. During the pendency of suit, defendant No.1 – Sarwan Singh died on 15.01.2016, but no application by any one had been moved for bringing on record the legal representatives (in short ‘L.Rs.’) of said defendant No.1 – Sarwan Singh. Factum of death of said Sarwan Singh, was brought to the notice of the Court by way of a death certificate of defendant No.1, which was placed on record as Ex.A1, and in the written statement filed by defendant No.2 also, factum of death of defendant No.1 finds a mention. After going through the pleadings of all the parties appearing before the Court, Ld. Trial Court framed issues in the suit vide its order dated 15.11.2017, however, in the first part of the order, suit *qua* defendant No.1 was dismissed. The operative part of said order is reproduced herein-below:-

*“Present: Mr. Surinder Dogra, Adv., counsel for the plaintiffs.
Ms. Suniana Anand, Adv., counsel for defendant no.2.
Mr. N.K. Jadav, Adv., counsel for the defendant no.3.
Suit qua defendant no.1 dismissed, vide order dated 15.11.2017.*

*Perusal of file reveals that on 29.02.2016, Ms. Alka, Advocate for defendant no.2 stated that defendant no.1 had expired on 15.01.2016. She also placed on record death certificate of defendant no.1 as Ex-A1. The said fact is also disclosed in written statement of defendant no.2 but neither plaintiffs nor defendants moved any application for impleading LR's of defendant no.1 as party. **As such, the suit qua defendants no.1 stands dismissed.**”*

4. Learned counsel for the petitioners (representing plaintiffs before the trial Court) contends that order dated 15.11.2017, to the extent of

dismissing the suit filed by the plaintiffs qua defendant No.1 is against the provision of law. Counsel addresses that bare reading of Order XXII Rule 4 of Code of Civil Procedure (CPC) is required to be gone through. Basic principle of Order XXII Rule 4 CPC is reproduced herein-below:-

“

ORDER XXII*Death, Marriage and Insolvency of Parties*

1. xx xxx xx xxx

2. xx xxx xx xxx

3. xx xxx xx xxx

4. *Procedure in case of death of one of several defendants or of sole defendant.—(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendants to be made a party and shall proceed with the suit.*

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where—

(a) the plaintiff was ignorant of the death of a

defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

- (b) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.”*

Further, amendment carried out vide notifications dated 11.04.1975 for the State of Punjab, and dated 25.03.1975 for the State of Haryana, under Order XXII Rule 4 CPC, as applicable to the States of Punjab, Haryana and Chandigarh, is extracted and reproduced as under:-

“5. The first appellate court has overlooked the amendment made in Order 22 Rule 4 of the Code of Civil Procedure, 1908 brought in vide notification dated 11.4.1975 as applicable to the States of Punjab, Haryana and Chandigarh. Amendment carried out in the Code of Civil Procedure is extracted as under:-

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

- (ii) The following shall be inserted as sub-rule (4),*

(5) and (6) to Rule 4 of Order XXII:

- (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 such 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 Indian Limitation Act (36 of 1963) shall apply to applications under sub-rule (4)””*

5. Relying upon the said amendment dated 11.04.1975, Mr. Vaibhav Sehgal, learned counsel for the petitioners (plaintiffs) submits that as per the said amendment, during the pendency of suit, if the defendant or one of the defendants dies, such suit shall not abate, rather, any decree as passed *qua* such a deceased - defendant(s), would be binding on the actual legal representative(s) of such deceased – defendant(s). However, it will be open for the LRs to come forward and file an application for their impleadment as LRs or may file a fresh suit for challenging such decree on the specific parameters.

6. Learned counsel for respondent No.1 (hereinafter referred to as ‘defendants’) opposed the submissions addressed by learned counsel for the plaintiffs, rather, supports the order passed by the Trial Court of dismissing

the suit *qua* defendant No.1.

7. Learned counsel for the plaintiffs also apprised this Court about some of the dates and stages of proceedings before the Trial Court, from the time of filing of the civil suit, such as:

- Suit was filed on 18.05.2015;
- Defendant No.1 and defendant No.2, who are real brothers after receiving the notice of the suit, put in appearance in the suit proceedings through Ms. Sunaina Anand, Advocate on 08.09.2015, where after, proceedings were deferred for awaiting written statement;
- On 14.10.2015 although, the proceedings were fixed for affecting service upon defendant No.3, yet defendants No.1 & 2 appeared but did not chose to file their written statement;
- Again on 21.11.2015, defendants No.1 & 2 did not file their written statement, and the proceedings were adjourned to 05.01.2016;
- On the said date also, again none of the defendants chose to file written statement.
- Next date fixed was 27.01.2016, however, during this period, on 15.01.2016, defendant No.1 – Sarwan Singh expired and the said fact was informed to the court on 29.02.2016;
- Death certificate was also taken on record as Ex.A1.

8. Written statement was filed by defendant No.2 on 10.08.2016. In the said written statement, first preliminary objection taken was that no suit can be proceeded against a dead person, and LRs of Sarwan Singh (deceased defendant No.1) have not been impleaded. Preliminary objection No.1 in the written statement filed by defendant No.2, is as under:-

“Preliminary objection:

1. *That no suit can proceed against dead person. Sarwan*

Singh, defendant No.1 died in January 2015, his LR's have not been impleaded.”

9. By highlighting the aforementioned factual circumstances and the proceedings before the Trial Court, Mr. Vaibhav Sehgal, learned counsel for the plaintiffs, submits that there were three opportunities available with defendants No.1 & 2 to file their written statements before the death of defendant No.1 – Sarwan Singh. Therefore, it cannot be said that just after filing of the suit, death of defendant No.1 took place, and there was no notice to the concerned defendant or his family members. Moreover, to introduce themselves as successors of the rights of deceased defendant was the duty casted upon the legal representatives of such defendant. As per the amended law, it is not obligatory for the plaintiffs to bring on record the legal representatives of the deceased defendant, who died after filing of the suit.

10. As per amendment, duty is upon the actual legal representatives themselves to approach the Court for joining the suit proceedings, or otherwise they may challenge the decree subsequently, if suit of the the plaintiffs succeeds; and for the said purpose, parameters have been specified in the law.

11. Thus, learned counsel for the plaintiffs in support of his submissions, cites some judgments. First of all, he refers to the judgment passed by this Court in **Norata Singh v. Sawaya Singh (deceased) by his LR's, 1992(2) R.R.R. 271 : Law Finder Doc Id #51221**. The relevant extract of the judgment is reproduced hereinbelow:-

“4. I have heard learned counsel for the parties at length.

5. High Court of Punjab and Haryana has amended Order 22 Rule 4 of the Civil Procedure Code vide Punjab

Government Gazette Part II dated April 11, 1975, wherein, it has been provided that if within the time limited by law, no application is made to bring on record the legal representatives of the defendant, then under sub-rule (1) the suit shall not abate as against the deceased-defendant and the judgment can be pronounced notwithstanding the death of the defendant.

6. *Both the Courts below have not taken notice of the amendment of Order 22 Rule 4 of the Civil Procedure Code, made by the High Court. Under similar circumstances, J.V. Gupta, J. (as he then was), in a judgment Saraswati and others v. Hazari Lal and others, 1989 PLJ 670 : 1990(1) RRR 55, held as under :*

“It is no more disputed that there was no limitation for bringing on record the legal representatives of the deceased-defendant in view of the amendment of this Court in Order 22 Rule 4, CPC, vide Punjab Government Gazette, 11.4.1975, Part II, wherein it has been provided that if within the time limited by law, no application is made under sub-rule (1) the suit shall not abate as against the deceased-defendant and judgment be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before his death took place. That being so, the question of abatement does not arise and the legal representatives are entitled to be brought on the record at any time.”

7. *In view of the amendment made by this Court in Order 22 Rule 4 of the Civil Procedure Code and the law laid down in Saraswati’s case (supra), this revision petition succeeds, the impugned orders are set aside and the application for bringing on record the legal representatives of deceased-defendant is allowed. There would be no order as to costs.*

8. *Parties through their counsel are directed to appear before the trial Court on April 20, 1992, on which date the trial Court shall summon the file from the record room and then proceed with the suit and adjudicate upon the dispute in accordance with law.”*

Also, relies upon another judgment of this High Court rendered

in **Lal Chand and others v. Raghu Nath and others, 2010(1) R.C.R.(Civil)**

149 : Law Finder Doc Id #204215, and refers to para Nos. 5 & 7, which are reproduced as under:

“5. Having considered this contention, I find merit in the same. Though, the law of limitation is a Central Act, yet, the High Courts by virtue of Section 122 of CPC were not divested with the powers to make rules regulating their own procedure and the procedure of the civil courts subject to the superintendence and may by such rules annul, alter or add to all or any of the rules in the First Schedule. Section 122 of CPC lays down as follows:-

"High Court not being the Court of a Judicial Commissioner, may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence and may by such rules annul, alter or add to all or any of the rules in the First Schedule."

6. xx xxx xx xxx
 xx xxx xx xxx

7. As per the amendment, where one of two or more plaintiffs dies and right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application in that behalf, shall cause the legal representatives of the deceased plaintiff to be made a party and shall proceed with the suit. The amendment further speaks that even if no application is filed within time, then the suit shall not abate against the deceased plaintiff and the judgment could be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between deceased and the pleader in that event shall continue to subsist.”

Learned counsel further relies upon the judgment of this Court

rendered in **Rup Ram v. Nand Ram @ Nand Lal (deceased) through LRs,**
2019(1) R.C.R.(Civil) 4 : Law Finder Doc ID #1132214. He refers to para
 Nos. 4, 5 & 6 of the same, which says as under:-

“4. I have heard learned counsel for the respondents and gone through the judgment passed by the courts below.

5. The first appellate court has overlooked the amendment made in Order 22 Rule 42 of the Code of Civil Procedure, 1908 brought in vide notification dated 11.4.1975 as applicable to the States of Punjab, Haryana and Chandigarh. Amendment carried out in the Code of Civil Procedure is extracted as under:-

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

(ii) The following shall be inserted as sub-rule (4), (5) and (6) to Rule 4 of Order XXII:

(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 such 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 Indian Limitation Act (36 of 1963) shall apply to applications under sub-rule (4)”

6. It is clear from the reading of the sub rule (3) which has been amended that the suit does not abate against the deceased defendant even if no application is made under sub rule (2) and decree passed against the deceased-defendant would be deemed to have been passed before he died.”

Also, relies upon another judgment of this High Court rendered

in **Parmeshwari Devi and others v. Per Chand and ors., 1989(2) R.R.R.**

286 : Law Finder Doc Id #51498. Para No.5 of which, says as under:-

“5. After hearing the learned counsel, I find that the ejectment application should not have been dismissed as having abated. Even if Raunak Ram had died on February 11, 1975, the ejectment application could proceed as such without impleading his legal representatives. In any case, in view of the amendment in Order 22 Rule 4 of the Code, which came into force on March 10, 1975, it was the duty of the legal representatives of the deceased Raunak Ram to make the necessary application for bringing them on the record. Consequently, this revision petition succeeds and is allowed. The impugned orders are set aside and the application filed by Om Parkash respondent, dated April 17, 1982 stands dismissed. However, it will be open to the legal representatives of the deceased Raunak Ram to come on record, if so advised. Since the ejectment application is pending since April, 1973, it is directed that the ejectment application be disposed of within six months. The parties are directed to lead their evidence at their own responsibility. The parties directed to appear before the Rent Controller on January 31, 1989.”

Also, relies upon judgment of this Court in **Tara Singh and another v. Smt. Dato and others, 2008(2) R.C.R.(Civil) 40 : Law Finder Doc Id #137085**, and refers to para No.9, which says as under:-

“9. It may be noticed that an amendment was made in Order 22 Rule 4 of the Civil Procedure Code by this Court on 11.4.1975 to the effect that it shall be duty of every Advocate appearing in the case, who becomes aware of the death of a party to the litigation to intimate the Court about the death of that party and to the party who is dominus-litus. Another Rule was inserted to the effect that the duty to bring on record the

*legal representatives) of the deceased-defendant shall be of the heirs of the person and not of a person who is dominus-litus. It is, thus, apparent that the intention of rule making Authority was evident that on account of non-impleading of legal representative(s) of deceased defendant, the proceedings should not come to an end summarily. Still further, in **Sardar Amarjit Singh Kalra (Dead) by LRs and others v. Pramod Gupta (Smt) (Dead) by LRs and others, 2003(3) Supreme Court Cases 272**, it was held by the Hon'ble Supreme Court as under :-*

"26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 Civil Procedure Code as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice."

At last, learned counsel for the plaintiffs relies upon the Division Bench judgment of this Court rendered in **Gurdev Kaur v. Gram Panchayat Balad Kalan and others, 2009(1) R.C.R.(Civil) 550 : Law Finder Doc Id #177285**, and refers to para Nos. 6 & 7, which are reproduced as under:-

"6. In P. Chandrasekharan and others v. S. Kanakarajan and others, 2007(3) RCR (Civil) 116: 2007(1) RCR (Rent) 543 : 2007(3) RAJ 203 : 2007(5) Supreme Court Cases 669,

the Hon'ble Supreme Court held that some of the heirs and the legal representatives of the deceased-Cross Objector being already party to the appeal, the estate of the deceased has substantially been represented.

7. *The said view was followed by this Court in **Padmawati and others v. Kulwant Rai and others, 2008(1) RCR (Civil) 605: (2008-2)150 PLR 424**, wherein it was held to the following effect:*

*"46. A Full Bench of this Court in **Sardara Singh v. Harbhajan Singh, AIR 1974 Punjab and Haryana 345**, has found that all the legal heirs are not required to be served as their interests are fully protected by the other legal heirs, who are already on record. It was held that what is to be seen is whether the estate is effectively represented. In **Hari Singh v. Mangal Singh etc., 1968 Current Law Journal (Pb. & Hry.) 922**, this Court held that in the absence of any fraud or collusion between the plaintiff to indicate that there has not been a fair or real trial, or that against the absent heir there was a special case which was not and could not be tried in the proceedings, the doctrine of sufficient representation shall be attracted. A Division Bench of the Court in **Baldev Singh v. Hira, (1972)74 P.L.R. 422**, has held that despite the death of one of the legal representatives of the deceased party, his estate continues to be fully/represented by the remaining legal representative. Therefore, there is no question of total or partial abatement."*

12. I have heard learned counsel for both the sides and considered the relevant material available on record and the compendium of judgments cited by the side of plaintiffs.

On the other hand, counsel representing the respondents/defendants, has not cited any specific law or the judgment to counter the arguments of the plaintiffs.

13. In normal course, it is understood that once the plaintiff(s) knows that the defendant against whom the relief is claimed has expired, it would be obligatory for him to bring on record his/her legal representatives.

This is because in routine course, such legal representatives, if any, cannot be expected to know the pendency of Court proceedings. Therefore, the provision is required to be peeped into very carefully. If a microscopic image of thought is developed, this Court is of the view that the introduced amendment of 1975 is double edged.

14. Amendment speaks about two situations when the legal representative(s) would be entitled to challenge the decree, if any, passed against the deceased - defendant. In the first situation, burden would be, upon such a legal representative, to prove before the Court that he was not aware of the pendency of any such suit before the Court before whom such an application has been moved. The second situation is that if he was aware of the suit pendency, he did not fail to come to the Court intentionally by moving an application to bring himself on record.

Thus, in case any decree is passed against the deceased – defendant, on moving an application by such legal representative(s), if Court is satisfied either of the two i.e. :

(i) The legal representative(s) was not aware of the pendency of the suit proceedings

or

(ii) He did not fail to appear intentionally by making an application to bring himself on record.

15. By satisfying either of these two aspects, the Court would set-aside the decree and may proceed afresh. From the language of the amendment, it is clear that no other ground would be available with the legal representatives. Rather, in the absence of proving of either of the two situations, it may be presumed that the legal representative(s) of the deceased – defendant, who suffered decree against him, has no right to

challenge such decree by that stage, because he had knowledge of the pendency of the suit and purposely, did not chose to appear to cause delay and frustration to the plaintiff(s).

16. This Court has another angle of microscopic image of the interpretation of the Rule that if plaintiff, despite knowing the fact that the defendant has expired, does not move an application for bringing on record the legal representative(s) for some hidden reason, proceedings against dead person would be taking a risk of obtaining such decree from the Court by keeping the legal representative(s) away from the suit proceedings, because finally fate of decree would depend upon such legal representative(s), whose right is well protected by the law.

17. The objective purpose of bringing the amendment seems to be to not to create a halt in proceedings of the suit because of some hidden reason in the mind of the either side and thus, the purpose of the amendment is to keep the proceedings in continuation for the speedy disposal of the trial.

18. Otherwise also, applying the principle of law laid down in **Ismail (Deceased) and Ors. vs. Shame Singh and Ors., 2002(2) R.C.R. (Civil) 57 : Law Finder Doc ID # 4823**, if the property subject matter is in joint holding of the other defendants also, being the owner of every inch of the joint land, it is obligatory upon the remaining defendants/share holders to watch the interest of the property as a whole, which automatically includes watching of interest on behalf of deceased - defendant also. Thus, where the estate property is joint, principle of co-sharership would apply and the surviving defendant would be expected to make all efforts to safeguard the interest of the deceased – defendant also. Relevant para

No.19 of the aforesaid judgment says as under:-

“19. I have given serious consideration to the arguments of the learned counsel for the parties and in view of the law laid down by the Supreme Court in the case of Lalith Mohan Mullick's case (supra) and in the case of Gema Countinho Rodrigues's case (supra) and in various judgements of this Court, I do not think that the contention, raised on behalf of the defendants is sustainable and the same is liable to be rejected. It is abundantly clear from the various judgements cited by the learned counsel for the plaintiffs that the right to sue would survive for the simple reason that despite the fact the application of Ismail has been dismissed and Hashmat had died during the pendency of the suit, the application of Rehmat has been allowed for impleadment of his legal representatives. Once the land is in joint ownership of the plaintiff Rehmat or his legal representatives then the legal representatives would also be entitled to be the owner of every part of the land, therefore, the right to sue would survive to the legal representatives of Rehmat if none else.”

Thus, though it has not been argued whether the property/subject matter is in joint holding of all the defendants including the deceased or not, yet, the principle of watching for the joint interest by the surviving defendants/share holders would automatically cover the interest of the deceased - defendant also. It is always open in law for the legal representatives to move an appropriate application to bring himself/themselves on record of the suit pending before the Court.

18. Having considered and applying the principle of law with the amendment as reproduced and discussed in detailed in foregoing paras, and the reproduced part of the judgments cited by the plaintiffs, I am completely in agreement with the submissions addressed by learned counsel for the

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plaintiffs, and therefore, hold that the impugned order 15.11.2017 to the extent of dismissing the suit *qua* deceased-defendant No.1, is not sustainable, thus same is set-aside. The Trial Court may continue with the suit proceedings *qua* deceased-defendant No.1 also, as if, he is alive.

Accordingly, revision petition stands **disposed of** in above terms.

(SANJAY VASHISTH)
JUDGE

July 24, 2023

J.Ram

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