

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision : 03.10.2023

1.

CR-1282-2023 (O&M)

Karamjit Singh

....Petitioner

Versus

Harbans Singh (since deceased) through LR Karamvir Singh

....Respondent

2.

CR-1294-2023

Karamjit Singh

....Petitioner

Versus

Harbans Singh (since deceased) through LR Karamvir Singh

....Respondent

CORAM : HON'BLE MR. JUSTICE SANJAY VASHISTH

Present :- Mr. Ashok Giri, Advocate for the petitioner.

Mr. Mitul Singh Rana, Advocate
for the respondent.

SANJAY VASHISTH, J. (ORAL)

CM No.18248-CII-2023 in CR No.1282 of 2023

1. Prayer is for placing on record Annexure R-1 (Birth Certificate), Annexure R-2 (10th Certificate), Annexure R-3 (Passport) and Annexure R-4 (Aadhar Card).

2. Notice of the application.

3. Mr. Ashok Giri, Advocate, who is present in Court accepts notice on behalf of non-applicant/petitioner.

4. For the reasons stated in the application, same is allowed, subject to all just exceptions. The said documents are taken on record.
4. Registry to tag the same at appropriate place.

Main cases

1. By this common order, this Court shall dispose of aforesaid two petitions as identical facts and questions of law are involved in the same. Facts are being extracted from CR-1282-2023 for the sake of convenience.
2. Challenge has been laid to the order dated 30.03.2022, whereby learned First Appellate Court in the proceedings pending before it, has allowed the application for bringing on record the legal heir of Harbans Singh who is respondent in the appeal.
3. Petitioner-Karamjit Singh being the plaintiff had filed suit for permanent injunction against Harbans Singh, which was dismissed. On the other hand, suit for possession filed by Harbans Singh was decreed by the trial Court. Thus, it is Karamjit Singh who is appellant before the First Appellate Court, while challenging both the judgment and decree. During the pendency of both the appeals, respondent-Harbans Singh expired and thereafter, application for bringing on record the legal heir filed by one Karamvir Singh claiming himself to be the son of Harbans Singh, was allowed by the learned Court below.
4. Learned counsel for the petitioner argues that while allowing the application, learned Lower Appellate Court, has not followed the principles of law as enshrined under Order XXII Rule 5 of CPC, which reads as under:-

"Order XXII: Death, Marriage & Insolvency of Parties:-

1 to 4A: XXX XXX XXX

5. Determination of question as to legal representative :- *Where a question arises as to whether any person is or is not the legal*

representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court :

Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any recorded at such trial, its findings and reasons therefore, and the Appellant Court may take the same into consideration in determining the question.'

5. I have gone through the order and reply to the application filed by Karamjit Singh before the Lower Appellate Court. Relevant part of the reply is also reproduced hereunder:-

'Sir,

It is submitted as under:-

1. That the present application is not maintainable.

Reply on merits:-

1. That this para is correct.

2. That this para is wrong and hence denied.

3. That this para is wrong and hence denied.

It is, therefore, prayed that the present application be dismissed with cost in the interest of justice.'

6. From a perusal of impugned order and the reply to the application filed by the petitioner, it is noticed that no such argument was ever raised before the learned Court below, and therefore, no question arises with regard to the fact whether Karamvir Singh is the legal representative of deceased Harbans Singh or not.

7. However, the counsel submits that on the basis of allowing of the application, respondent has instituted the execution application without there being any right in actual. While submitting so, petitioner refers to the registered Will dated 14.02.2011, whereby one Harbans Singh executed a Will in favour of Karamvir Singh (legal representative in present case), who is said to be the son of Harjinder Singh, son of Avtar Singh, resident of Village Godhpur, Tehsil Dasuya. Translated copy of the said Will has been appended with the present petition as well.

Therefore, the counsel further submits that inadvertently the said fact could not be brought to the notice of the trial Court. Rather application was filed by concealing the true facts, therefore, application was allowed against the spirit of the law enshrined under Order XXII Rule 5 CPC. In order to strengthen his submissions, counsel refers to the judgment '**Jaladi Suguna (dead) through L.Rs Vs. Satya Sai Central Trust and Ors., 2008(8) SCC 521**'. Paragraphs No.10 and 11 of the said judgments 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-...-vis other rival claimants to the estate of the deceased.

11. The provisions of Rules 4 and 5 of Order 22 are mandatory. When a respondent in an appeal dies, the Court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representatives, as parties to the appeal without deciding who will represent the estate of the deceased, and proceed to hear the appeal on merits. The court cannot also postpone the decision as to who is the legal representative of the deceased respondent, for being decided along with the appeal on merits. The Code clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the court. The Code also provides that where one of the respondents dies and the right to sue does not survive against the surviving respondents, the court shall, on an application made in that behalf, cause the legal representatives of the deceased respondent to be made parties, and then proceed with the case. Though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of the appeal on merits, Rule 4 read with Rule 11 make it clear that the appeal can be heard only after the legal representatives are brought on record.'

8. Thus, counsel for the petitioner submits that the provisions of laws i.e. Order XXII Rule 4 and 5 are mandatory and are not directory in nature.

9. On the other hand, counsel for the respondent is unable to give any satisfactory reply before this Court. However, submits that said Will was never there, before the Court below.

10. Considering the submissions addressed by both the sides and taking note of the judgment reported in *Jaladi Suguna (dead) through L.Rs case (supra)*, I hereby deem it appropriate to set aside the order dated 30.03.2022 by directing the respondent herein to file his application afresh under Order XXII Rule 5 CPC and accordingly, the petitioner herein would also be given a chance/effective opportunity to file his detailed reply. Thereupon, the same would be decided afresh by the learned Appellate Court after taking note of the provisions of law under Order XXII Rule 5 CPC and the judgment referred herein above.

11. Ordered accordingly. The said exercise would be completed within *four weeks* from the date of receipt of certified copy of this order.

12. Accordingly, both the petitions stand disposed of.

13. Copy of order be forwarded to the Court concerned.

03 October, 2023

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(SANJAY VASHISTH)

JUDGE

Whether speaking/reasoned: Yes

Whether Reportable : Yes