

2023:PHHC:143617
144 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CR-1473-2023 (O&M)
Date of decision: 09.11.2023

Manjit Kaur and others

....Petitioners

Versus

Paramjit Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vivek K Thakur, Advocate for the petitioners
Mr. Satnam Singh and
Mr. Kuljinder Singh, Advocates for the respondents

ANIL KSHETARPAL, J (Oral)

1. It is unfortunate that the trial court has failed to take note of the amendment made in Order XXII Rule 3 of the Code of Civil Procedure, 1908, which became enforceable w.e.f 21.02.1992. While amending the Order XXII Rule 3 of the Code of Civil Procedure, 1908, it was laid down that where within the time limited by law, no application is filed to bring on record the legal representatives of the plaintiff, the suit shall not abate and the judgment may be pronounced notwithstanding his death. The amendment is extracted as under:-

“3. Procedure in case of death of one of several plaintiffs or of sole plaintiff (1) Where one of two or more plaintiffs dies and the 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 made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is

concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

2. Even after passage of nearly 32 years, the trial court has overlooked the aforesaid amendment. In this case, the trial court has dismissed the application filed by Class I heirs for permission to bring them on record. The court should have allowed the application even if it was not filed within the prescribed time, particularly when the suit shall not have abated. The legal representatives are brought on record to prosecute or defend the suit. This provision has been incorporated in order to give an opportunity to the legal representatives to continue with the proceedings.

3. Keeping in view the aforesaid facts, the impugned order dated 17.01.2023, is set aside. The application filed by the petitioners shall stand allowed, subject to all the just exceptions.

4. With these observations, the impugned order is set aside. The trial court is directed to permit the legal representatives of the plaintiff to prosecute the suit filed by late Sh.Malkiat Singh.

5. The revision petition stands allowed.

6. All the pending miscellaneous applications, if any, are also disposed of.

09.11.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE