

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 4020 of 2022****Date of Decision: 09.11.2023**

Mahesh and Others

... Petitioner(s)

Versus

Smt. Ritu Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sukhdeep Singh, Advocate
for Mr. Lokesh Sinhal, Advocate
for the petitioner(s).

Dr. Pankaj Nanhera and Mr. Sanjay Kumar, Advocates
for the respondent No.1 and 4.

Anil Kshetarpal, J.

1. A perusal of the paper-book shows that there are multiple errors in the procedure followed by the First Appellate Court while remanding the case back to the trial Court for deciding afresh.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. Late Sh.Bahadur Singh filed a suit for the grant of decree of specific performance of the agreement to sell dated 20.07.2010 with a consequential relief of declaration and prohibitory injunction on 18.04.2014. An application to bring his children on record as his legal representatives was filed on 16.01.2017. However, the Court did not pass any formal order. In the meantime, the plaintiff was represented by Sh.Raghuvesh Singhal, Advocate. The legal representatives of the plaintiff examined various witnesses and the Court, while passing the final judgment, noticed that during the pendency of the suit, the plaintiff-Bahadur Singh died and his legal representatives came on record. However, no formal order to bring them on record was passed. Ultimately, the suit was

decreed vide judgment and decree dated 23.10.2019. The defendant No.3 has filed the first appeal to challenge the correctness of the judgment passed by the trial Court. The First Appellate Court noticed that the trial Court has proceeded with the suit without impleading the legal representatives of the deceased plaintiff, therefore, the judgment and decree passed by the trial Court is nullity. Thus, the Appellate Court remanded the case back to the trial Court for adjudicating afresh after deciding the pending application for bringing on record the legal representatives of the plaintiff.

3. Pursuant to the order of remand, the trial Court has dismissed the application filed by the legal representatives on the ground that it is barred by limitation.

4. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

5. The learned counsel representing the petitioners, while drawing the attention of the Court to Order XXII Rule 3(2) of the Code of Civil Procedure, 1908, as applicable to the area of Punjab, Haryana and U.T. Chandigarh, submits that the suit shall not abate even if no application to bring on record the legal representatives of the plaintiff is filed. The Court is permitted to pronounce the judgment notwithstanding the death of the plaintiff as by statutory presumption wherein it has been provided that the judgment and decree shall have the same effect as if it was pronounced before the date of death of the plaintiff and the contract between the deceased and the pleader in that event shall continue to subsist.

6. The obvious purpose of such amendment was to obviate the dismissal of the suit having been abated which led to multiple rounds of litigation.

7. In this case, an application to bring on record the legal representatives was filed. Thereafter, the legal representatives continued to prosecute the suit. Only a formal order to allow the application was not passed.

8. The trial Court, while finally deciding the suit, noticed that the legal representatives have been brought on record. In such circumstances, it

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was a curable defect which the First Appellate Court could cure by passing a formal order.

9. Moreover, the appeal was filed by the defendant No.3. She has no right to complain that the legal representatives of the plaintiff have not been brought on record particularly when as per the amendment, the suit shall not abate for non-filing of the application within the limitation.

10. Keeping in view the aforesaid facts, the present revision petition is allowed. The judgment passed by the First Appellate Court on 13.01.2020 is set aside and the first appeal filed by the defendant No.3 is restored to its original number. The application filed by the legal representatives of the plaintiff is allowed. They are permitted to contest the appeal. The First Appellate Court is directed to decide the appeal on merits as expeditiously as possible. The parties, through their learned counsel are directed to appear before the First Appellate Court on 24.11.2023.

(Anil Kshetarpal)
Judge

November 09, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No