

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-7107-2023 (O&M).
Date of Decision: 19.12.2023.

Urmila Seth (since deceased) through LR Hemant Seth

....Petitioner.

Versus

Hardip Oberoi and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Sudhir Paruthi, Advocate for petitioner.

Lalit Batra, J.(Oral)

This civil revision petition under Article 227 of the Constitution of India has been filed by petitioner-Hemant Seth impugning the legality of order dated 09.11.2023 (Annexure P-3), rendered by learned Rent Controller, Jalandhar, vide which apart from petitioner-Hemant Seth, respondents No.2 and 3 namely Shravan Kumar Seth and Geetika being legal heirs have also been impleaded as legal representatives of Urmila Seth (since deceased).

2. Learned counsel for petitioner *inter alia* contended that Urmila Seth (mother of petitioner-Hemant Seth) alongwith respondent No.4-Rajni Seth wife of Hemant Seth, filed petition under Section 13 of the East Punjab Urban Rent Restriction Act, for eviction of respondent No.1-Hardip Oberoi from the demised shop erected in House No.249, Harnamdas Pura, Jalandhar, on the grounds of non-payment of rent, material alterations made in the demised shop and thereby its value and utility has materially impaired and

bonafide personal necessity. Respondent No.1-Hardip Oberoi filed written statement and contested the above said petition. During the pendency of eviction petition, Urmila Seth expired on 06.10.2023 and petitioner-Hemant Seth, being her son, filed an application for his impleadment as legal representative on the basis of registered Will dated 08.12.2010 executed by Urmila Seth (since deceased). It is categorical stand of petitioner-Hemant Seth that by virtue of Will dated 08.12.2010, he is the only legal representative to inherit the estate of deceased. Though it was averred in the application that apart from petitioner-Hemant Seth (son), Shravan Kumar Seth (son) and Geetika (daughter) are also legal representatives of Urmila Seth (since deceased), however, by virtue of above said Will, petitioner-Hemant Seth is the only legal representative to represent the estate of deceased. Vide order dated 09.11.2023 (Annexure P-3), learned Rent Controller without obtaining any reply from respondent, allowed the application and impleaded all the legal heirs as legal representatives of deceased Urmila Seth, whereas in terms of provisions of Section 2(11) CPC, 'legal representative' means a person who in law represents the estate of deceased person and in the present case, though Shravan Kumar Seth (son) and Geetika (daughter) are also legal heirs of deceased, but by virtue of Will dated 08.12.2010, the demised premises has fallen to the share of petitioner-Hemant Seth, therefore, he alone should have been impleaded as legal representative of deceased. He further contended that in this scenario, the impugned order is liable to be modified.

3. I have heard learned counsel for petitioner and have also gone through the contents of petition especially the documents placed on the record.

4. Notice of instant petition is not required to be given to respondents as relevant documents i.e. copies of ejectment petition, application for impleading LR of Urmila Seth (since deceased), and impugned order passed by learned Rent Controller are already on the record. In order to avoid further delay in the litigation and unnecessary litigation expenditure, the service of notice to respondents is dispensed with.

5. In an identical matter, Hon'ble Supreme Court in case **Suresh Kumar Bansal** vs. **Krishna Bansal & Anr.**, 2010(2) SCC 162, while dealing with provisions of Order XXII Rule 5 and Section 2(11) CPC regarding impleadment of legal representative, held as under:-

“9. Having heard the learned counsel for the parties and after going through the impugned order as well as the application for substitution of the appellant on the basis of the Will alleged to have been executed by the deceased plaintiff, we are of the view that the impugned order of the High Court is liable to be interfered with and the application for impleadment filed at the instance of the appellant on the basis of the Will alleged to have been executed by the deceased plaintiff must be allowed and the appellant must be impleaded in the suit along with the natural heirs and legal representatives of the deceased plaintiff, subject to grant of probate by a competent court of law. It is true that in the impugned order, the High Court has made it clear that the finding regarding genuineness of the Will was made only for the purpose of deciding the application for impleadment filed at the instance of the appellant. But, in our view, if at this stage, the appellant is not permitted to be impleaded and in the event an order of eviction is passed ultimately against the tenant/ respondent, the tenants will be evicted by the natural heirs and legal representatives of the deceased plaintiff who thereby shall take possession of the suit

premises, but if ultimately the probate of the alleged Will of the deceased plaintiff is granted by the competent court of law, the suit property would devolve on the appellant but not on the natural heirs and legal representative of the deceased. Therefore, in the event of grant of probate in favour of the appellant, he has to take legal proceeding against the natural heirs and legal representatives of the deceased plaintiff for recovery of possession of the suit premises from them which would involve not only huge expenses but also considerable time would be spent to get the suit premises recovered from the natural heirs and legal representatives of the deceased plaintiff. On the other hand, if the appellant is allowed to carry on the eviction petition along with the natural heirs and legal representatives of the deceased plaintiff, in that case decree can be passed for eviction of the tenant when the appellant shall not be entitled to get possession from the tenants in respect of the suit premises until the probate in question is granted and produced before the Court. Therefore, ultimately if the court grants a decree for eviction of the tenant/respondent from the suit premises, such decree shall be passed subject to production of probate by the appellant. That apart, since the question of genuineness of the will cannot be conclusively gone into by the court in a proceeding for substitution in a pending eviction suit and in view of the fact that an application was made at the instance of the appellant for impleadment as a legal representative of the deceased on the basis of the Will which is yet to be probated, in our view, best course open to the court is to allow impleadment of the appellant in the eviction proceeding, thereby permitting him to proceed with the eviction suit along with natural heirs and legal representatives of the deceased plaintiff, but in case the decree is to be passed for eviction of the tenant from the suit premises such eviction decree shall be subject to the grant of probate of the Will alleged to have been executed by the deceased plaintiff. At the same time, it is clear that in case the Will of the deceased plaintiff is found not to be genuine and probate is not granted, the court shall proceed to grant

the eviction decree in favour of the respondent no.1 and not in favour of the appellant. It is well settled that in the event, the Will is found to be genuine and probate is granted, only the appellant would be entitled to get an order of eviction of the tenants/respondents from the suit premises excluding the claim of the natural heirs and legal representatives of the deceased plaintiff. The Civil Procedure Code enjoins various provisions only for the purpose of avoiding multiplicity of proceedings and for adjudicating of related disputes in the same proceedings, the parties cannot be driven to different Courts or to institute different proceedings touching on different facets of the same major issue. Such a course of action will result in conflicting judgments and instead of resolving the disputes, they would end up in creation of confusion and conflict. It is now well settled that determination of the question as to who is the legal representatives of the deceased plaintiff or defendant under Order XXII Rule 5 of the Civil Procedure Code is only for the purposes of bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicata and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings. If this is allowed to be carried on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefited. In order to shorten the litigation and to consider the rival claims of the parties, in our view, the proper course to follow is to bring all the heirs and legal representatives of the deceased plaintiff on record including the legal representatives who are claiming on the basis of the Will of the deceased plaintiff so that all the legal representatives namely, the appellant and the natural heirs and legal representatives of the deceased plaintiff can represent the estate of the deceased for the ultimate benefit of the real legal representatives. If this process is followed, this would also avoid delay in disposal of the suit. In view of our discussions made hereinabove, we are, therefore, of the view that the High

Court as well as the trial Court were not at all justified in rejecting the application for impleadment filed at the instance of the appellant based on the alleged Will of the deceased plaintiff at this stage of the proceedings.”

6. In view of above settled proposition of law, in a given scenario, in a eviction petition on account of death of petitioner No.1-Urmila Seth, by virtue of provisions of Order XXII Rule 5 and Section 2(11) CPC, not only petitioner-Hemant Seth, who is claiming himself to be sole legal representative to represent the estate of deceased-Urmila Seth, on the basis of Will, but also all the natural legal heirs are to be impleaded as petitioners and, thus, learned Rent Controller has rightly impleaded all the natural legal heirs as well as petitioner-Hemant Seth to represent the estate of deceased.

7. Thus, there being no irregularity or illegality in the impugned order calling for any interference by this Court, the instant petition is dismissed.

8. Pending application, if any, also stands disposed of.

(LALIT BATRA)
JUDGE

19.12.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No