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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 25th of September, 2024

CR-7589-2016 (O&M)

DERA BABA THANDI RAMPetitioner

Versus

RULDU SIGNH (D) THR LRS & ORS ...Respondents

CR-7590-2016

DERA BABA THANDI RAMPetitioner

Versus

JAGRUP SINGH & ANR ...Respondents

CR-7591-2016

DERA BABA THANDI RAMPetitioner

Versus

JASBIR SINGH & ORS ...Respondents

CR-7640-2016

DERA BABA THANDI RAMPetitioner

Versus

NACHHATTAR SINGH & ANR ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Amit Jain, Senior Advocate with
Mr. Anupam Mathur, Advocate for the petitioner(s).

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Mr. Manish K. Singla, Advocate and
Mr. Gagandeep Singh Gill, Advocate
for respondent No.3 in CR-7589-2016
for respondent No.2 in CR-7590-2016
for respondent No.7 in CR-7591-2016
for respondent No.2 in CR-7640-2016.

PANKAJ JAIN, J. (ORAL)

These revisions petitions are directed against order passed by the Additional District Judge, Patiala whereby the applications filed at the behest of two persons claiming themselves to be the legal representatives of late Mahant Nirmal Dass, who died during the pendency of the appeal on 19th of January, 2015, have been disposed off allowing both of them to participate in the present proceedings as the legal representatives of the deceased without adjudicating their rival claims.

2. Counsel for both the parties do not dispute that in terms of Order XXII Rule 5 Code of Civil Procedure, Court was under obligation to first decide the issue of legal representatives and, thereafter, proceed. However, both of them want to claim themselves to be the Mahant.

3. Mr. Jain Ld. Senior Counsel relies upon order Annexure P-10 dated 25th of November, 2016 (in CR-7589-2016) passed by Additional District Judge, Patiala in Civil Appeal No.4/28.01.2014 to submit that Mahatmim Raman Kanta has been declared as the legal representative and the order has attained finality.

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4. Per contra, Mr. Singla even objects to mentioning of the petitioner as Mahant even in the memo of parties and further submits that Raman Kanta cannot claim title of Mahant.

5. The issue before this Court is not as to who is the legal representative of late Mahant Nirmal Dass but the issue is whether lower Appellate Court erred in allowing both the rival parties to represent the estate of late Mahant Nirmal Dass as his legal representatives?

6. Order XXII of the Code of Civil Procedure, 1908 deals with death, marriage and insolvency of parties. Order XXII Rules 3 & 4 prescribe procedure in case of death of one of several plaintiffs or of sole plaintiff and one of several defendants or of sole defendant, respectively. The provisions prescribe that on an application made w.r.t. survival of right to sue, the Court shall appoint legal representatives of the deceased-plaintiff(s)/defendant(s) and shall proceed with the suit. Rule 5 relates to determination of question as to legal representatives. Rule 11 provides application of Order to appeals where it has been specifically provided that the word 'plaintiff' shall be held to include an appellant, the word 'defendant' a respondent and the word 'suit' an appeal. The provisions read 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 the sue survives, the Court, on an application made

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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.

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

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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 with 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.]

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 therefor, and the Appellate Court may take the same into consideration in determining the question.]

11. Application of Order to appeals.—In the application of this Order to appeals, so far as may be, the word “Plaintiff” shall be held to include an appellant, the word “defendant” a respondent, and the word “suit” an appeal.”

7. The issue w.r.t. decision by the Court regarding rival claims of the parties claiming themselves to be legal representative of the deceased is no more *re integra*. Interpreting Order XXII Rule 5 CPC, Supreme Court in

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the case of **Jaladi Suguna (Dead) through L.R. vs. Satya Sai Central Trust and others, (2008) 8 SCC 521** held as under :

“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. The aforesaid dictum has been further followed by Apex Court in the case of **Mahanth Satyanand @ Ramjee Singh vs. Shyam Lal Chaudhan and others, (2018) 18 SCC 485** holding as under :

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“11. It is indisputable that the procedural laws are meant to advance justice. A procedure contemplated under the code which is mandatory in nature shall not be skipped or ignored by the Courts. Whereas, in the instant case, the High Court’s approach has diluted the purport of Order 22 Rule 5 of the CPC and is contrary to the law laid down by this Court in Jaladi Suguna (supra). Such an approach of the High Court cannot be sustained.

12. Although we are apprised of the fact that alleged legal representatives relying on certain customs to prove whether a Grihastya could be a Guru under the relevant sampradaya. We need not concern our self with the aforesaid findings on merit given by the trial court at this stage. It is for the High Court to consider the aforesaid report of the trial Court and determine the disputed question of fact. It may not be out of context to note that the determination under Order XXII Rule 5 of CPC is summary in nature and for limited purpose. Order passed on the impleadment applications, determining a particular person as legal representative has no effect of final decision or operates as res-judicata between the legal representatives as to the question of who should ascend as Guru. At the cost of repetition, we may note that the determination by the High Court would be limited to the question, as to who should be brought on record in the place of deceased for the purposes of continuing the suit alone, and nothing beyond that.”

9. In view of above, the impugned orders are set aside. The Appellate Court is directed to decide the claim w.r.t. legal representatives of late Mahant Nirmal Dass within a period of six months.

10. Mr. Singla points out that the matter is now fixed for 29th of October, 2024.

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- 11. On the said date, the parties shall appear before the Appellate Court.
- 12. Petitions stand disposed off accordingly.
- 13. Pending application(s), if any, shall also stand disposed off.
- 14. A copy of this order be kept on the files of other connected cases.

September 25, 2024

(Pankaj Jain)
Judge

Dpr

Whether speaking/reasoned : Yes
Whether reportable : Yes