

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

116

**CR-6287-2023 (O&M)
Decided on: 25.01.2024**

MADAN MOHAN GOYAL

...Petitioner

Versus

PARVITA GOYAL AND OTHERS

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. J. S. Lalli, Advocate
for the petitioner.

RITU TAGORE, J.(Oral)

1. This revision is directed against the order dated 18.08.2023 (Annexure P-6) passed by Civil Judge (Junior Division), Ludhiana in Civil Suit No.9800 of 2022 titled 'Madan Mohan Goyal Vs. Parvita Goyal and others' whereby an application (Annexure P-5), filed by petitioner for impleading all the legal heirs of deceased Abhay Kumar, has been dismissed.
2. Considering the limited prayer made in this revision, notice to respondents is dispensed with.
3. Learned counsel for the petitioner (plaintiff before the learned lower Court) contends that the petitioner has filed a suit for declaration and partition, claiming himself as a co-sharer/co-owner to the extent of half

share in the suit property (as detailed in the plaint) alongwith defendant No.1, on the plea that suit property belongs to joint Hindu family property with further relief of partition of the suit property by metes and bounds to the extent of his share, through several pleas taken in the plaint.

4. It is stated that respondents (defendants) have filed their pleadings, raising contest to his averments. Abhay Kumar, respondent no 2 expired on 03.08.2023, leaving behind Parvita Goyal-respondent No.1 (wife), Vinay Goyal-respondent No.3 (son), Malti Goyal @ Mala Singla and Geetanjli Goyal @ Kamya Bansal (daughters). The learned lower Court did not impleaded all the LR's; instead, impleaded respondent No.1-Parvita Goyal and Vinay Goyal as LR's of deceased-Abhay Kumar, by allowing their application vide order dated 10.08.2023. Learned counsel contended that application (Annexure P-5) moved by petitioner, immediately on 18.08.2023 to implead the daughters, namely Kamya Bansal and Mala Singla as the legal heirs of deceased Abhay Kumar was declined by the Court on the premise that the application for impleading the LR's of Abhay Kumar has already been allowed, and estate of the deceased is already being represented through LR's (widow and son). Further, it the duty of the LR's to appear.

5. Learned counsel contended that in the given assertions and counter assertions made by the parties in the present *lis* all the legal heirs with whom right to sue/defend survives in their favour, should be brought on record. The daughters being one of them should also be impleaded as LR's of deceased, which would also enure for the subsequent stages of the suit.

6. It is matter of record that during the pendency of the suit Abhay Kumar, one of the respondents died leaving behind four legal heirs as detailed above. It is undeniable position of law that suit would not abate

owing to non-substitution of legal heirs of deceased when estate (interest) of a deceased is being represented by other defendants along with the deceased-defendant, when they are also his legal heirs. Nonetheless, if all the legal heirs of deceased litigant, whether plaintiff or defendant, are available, they should be brought on record. In the given conspectus of issues, involved in this litigation, where the plaintiff claims suit property as HUF property, it is desirable to include all the LRs of deceased Abhay Kumar. In the present case, not only in earlier application moved on behalf of widow and son of the deceased, where the daughters have been named as LRs of deceased Abhay Kumar, but plaintiff has also prayed to include them on record as such.

7. Order 22 Rule 4 Code of Civil Procedure provides the procedure for bringing on record, the LRs in case of death of several defendants or of sole defendant. Order 22, Rule 4 (1 & 2) reads as under:-

“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 defendant 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.”

8. One of the grounds for rejecting the petitioner’s application was that it was the duty of LRs to come on record. Indeed, Rule 4 also empowers the plaintiff to file an application for impleadment of LRs of deceased defendant. The dismissal of application for impleadment of left out LRs of deceased, moved on behalf of the plaintiff, should not have been based on the ground mentioned above.

9. Given the aforementioned rationale, the impugned order dated 18.08.2023 is flawed in eyes of law and the same is, hereby set aside. Let daughters, along with other LRs already impleaded, be brought on record as the LRs of deceased-Abhay Kumar.
10. In above terms revision is allowed.
11. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

25.01.2024
Rimpal

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