



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 2 of 2025 (O&M)

Date of Decision: 30.04.2025

Rajbir (Since Deceased) through his Legal Representatives

... Petitioner(s)

Versus

Subhash and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ashish Aggarwal, Senior Advocate
with Mr. Saket Bhandari and Mr. Vishal Pundir, Advocates
for the appellant(s).

Anil Kshetarpal, J.

CM-724-CII-2025

1. For the reasons stated in the application, the same is allowed and delay of 36 days in filing the appeal is condoned.

SAO-2-2025

2. The learned senior counsel representing the appellant fairly submits that in view of the detailed order passed by this Court in *Aditya Minor through his mother Smt. Pooja alias Pataso Devi alias Parkasho v. Subhash and Others (S.A.O. No. 49 of 2024, decided on 25.04.2025)*, the present appeal is also required to be disposed of in the same terms. The order passed on 25.04.2025 in the aforementioned case is extracted as under:-

“1. Transferee from late Sh. Rajbir (who was the original owner) assails the correctness of the First Appellate Court's order remitting the matter back to the trial court for a fresh

decision after granting opportunity of hearing to all concerned.

2. *In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.*

3. *Late Sh. Rajbir entered into an agreement to sell with respect to the land measuring 19 kanals and 18½ marlas on 21.06.2012, in favour of Sh. Subhash Chand, on receipt of Rs.40,00,000/- as earnest money, whereas the total sale consideration came to be around Rs.63,00,000/- approximately. Subsequently, on 07.08.2012, late Sh. Rajbir executed a release deed in favour of Aditya son of Sh. Shri Ram (brother of late Sh. Rajbir). As per the agreement to sell, the sale deed was to be executed and registered on 21.12.2012. The plaintiff after sending two notices, filed the suit on 21.12.2015 (Monday).*

4. *Notice in the suit was issued and it was reported that late Sh. Rajbir died on 02.02.2016 i.e. after filing of the suit.*

5. *The learned counsel representing the respondents submits that late Sh. Rajbir was served on 19.01.2016, but he refused to accept notice.*

6. *The plaintiff filed an application to bring on record Aditya as his legal representative which was allowed by the court on 21.04.2016. Thereafter, the court issued notices to Aditya twice, however, the same were received back unserved. On 07.09.2016, Aditya entered appearance through his counsel. He was represented by his natural guardian, namely, mother.*

7. *The learned counsel sought time to file reply to the*

application to bring on record the legal representative, which was allowed. Ultimately, on 08.01.2018, the application to bring on record the legal representative was dismissed as not pressed. The plaintiff again filed an application to bring on record the brother and three sisters of the deceased as legal representatives which was again contested by Aditya's counsel. Ultimately, reply was filed and thereafter the court chose to dismiss the suit on the ground that the application to bring on record the legal representatives has not been filed within the prescribed period of limitation and the suit has been filed beyond the period of three years. The first appeal was filed and the First Appellate Court remitted the matter back to the trial court for fresh decision after granting opportunity of hearing to Aditya and brothers and sisters of Rajbir. The correctness of such order is challenged before this Court.

8. *This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.*

9. *The learned counsel representing the appellant submits that interlocutory orders passed on 07.09.2016 and 02.04.2021 were never challenged before the First Appellate Court and the suit was filed beyond the period of limitation as the limitation period expired on 20.12.2015, because the date fixed for execution of the sale deed was 21.12.2012. He further submits that Aditya has never been heard by the First Appellate Court.*

10. *This court has considered the submissions of the learned counsel representing the parties.*

11. *In fact, the First Appellate Court has correctly observed that the trial court failed to comprehend the issue involved in the present case. The expression 'legal representative' is not synonymous to the expression 'legal heir'. In the pending suit, the legal representatives are brought on record to maintain continuity of the proceedings. If the plaintiff has died, then his legal representatives are brought on record to enable them to continue the proceedings on behalf of the deceased-plaintiff. Whereas, if the defendant has died, then the legal representatives are brought on record to defend the case. While deciding the application to bring on record the legal representatives, the court does not decide the persons, who are entitled to inherit the estate of the deceased. Such order passed by the court while bringing on record the legal representatives does not operate as resjudicata as held by the Full Bench in **Mohinder Kaur and another vs. Para Singh and others, AIR 1981 (Punjab and Haryana), 130.***

12. *Once the first appeal was filed by the plaintiff against the main judgment, the correctness of all interim interlocutory orders could be examined by the First Appellate Court. Hence, the First Appellate Court has not committed any error. There was no requirement of separately challenging the interlocutory orders passed by the court while the appeal was filed against*

the main judgment.

13. This court has checked the period of limitation. Prima-facie the suit is not barred because 20.12.2015 was Sunday. As per Section 4 of the Limitation Act, 1963, where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted on the day when the court re-opens.

14. Now Aditya has been given opportunity to contest the case. It shall be open to him to take all the objections before the trial court.

15. With these observations, the appeal is dismissed.

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

3. In view of the above, the present appeal is dismissed. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

April 30, 2025
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No