



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

**RSA No.1799 of 1993(O&M)**

**Reserved on: 04.03.2025**

**Pronounced on: 03.04.2025.**

**Kanta Devi and others**

**...Appellants**

**Vs**

**Punjab & Sind Bank and another**

**...Respondents**

**CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Argued by: Mr. Pritam Saini, Advocate  
for the appellants.

Mr. Anant Bir Singh Sidhu, Advocate  
for the respondents.

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**VIKRAM AGGARWAL, J**

This is defendants appeal against the judgment and decree dated 21.05.1993 passed by the Court of learned Additional District Judge, Ropar dismissing the appeal filed against the judgment and decree dated 21.08.1989 passed by the Court of learned Sub-Judge, First Class, Kharar, vide which the suit filed by the Punjab & Sind Bank (plaintiff) for recovery of ₹35994/- was decreed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff (Punjab & Sind Bank) filed a suit for recovery of ₹35994/-including interest up to 05.02.1987 and future interest @14.5% per annum from the date of institution of the suit till realization against the defendants (Jagrotam Dass-defendant No.1 and G.S. Dhami-defendant No.2).

3.1. The case set up by the plaintiff was that on a request having been made by defendant No.1, a term loan of Rs.25000/- was advanced to defendant No.1 for the promotion of electrical business. Defendant No.1 executed and signed the requisite loan documents including promissory note, agreement of hypothecation and other documents on 07.02.1984. The loan was repayable along with interest @2% per annum over and above the rate of Reserve Bank of India subject to minimum of 12% per annum with quarterly rests. Monthly installments of Rs.500/- each were fixed. Defendant No.2 stood guarantor for defendant No.1 and executed guarantee agreement dated 07.02.1984.

3.2 The defendants were unable to maintain the financial discipline resulting in their account becoming irregular. Despite repeatedly having been called upon to clear the loan, the same was not done. Under the circumstances, the suit was filed.

3.3 During the pendency of the suit, defendant No.1 expired as a result of which his legal representatives were brought on record. They filed their written statement opposing the suit. They stated that they were the legal heirs of Narotam Dass and not Jagrotam Dass who had taken the loan from the plaintiff. They denied having any concern either with the loan stated to have been taken or with Jagrotam Dass. It was also averred that the suit had been filed by the plaintiff in connivance with defendant No.4 and all loan documents etc. were forged and fabricated documents. An objection was also raised that the suit had been filed against a dead person as a result of which it was a nullity.

4. A separate written statement was filed by the guarantor (originally defendant No.2 and subsequently defendant No.4). He took a stand that one Jai Parkash s/o Charan Dass was known to him and was a

close relative of Jagrotam Dass @ Narotam Dass. Defendant No.4 had gone to the Bank for his personal work as he had an account in the said Bank. On the asking of the Branch Manager and Jai Parkash, he identified Jagrotam Dass @ Narotam Dass. It was averred that Jai Parkash and Jagrotam Dass @ Narotam Dass had played a fraud with the Bank in connivance with each other. A stand was taken that Narotam Dass and Jagrotam Dass were the same persons. Other averments were denied.

5. In the replication submitted to the written statement filed by defendants No.1 to 3, it was stated that Narotam Dass and Jagrotam Dass were one and the same person and that he had been introduced to the Bank by defendant No.4. Other averments made in the written statement were denied and those made in the plaint were reiterated.

5.1 A separate replication to the written statement filed by defendant No.4 was also filed and the allegations of fraud etc. were denied. All other averments made in the written statement were denied and those made in the plaint were reiterated.

6. From the pleadings of the parties, following issues were framed:-

- (1) Whether the suit having been filed against deed person namely Jagrotam Dass has abated qua him? OPD.
- (2) Whether the documents were signed by defendant No.4 as identifier and not as guarantor? OPD.
- (3) Relief.

7. Parties lead their respective evidence. The learned trial Court decreed the suit filed by plaintiff. Aggrieved by the same, the defendants filed an appeal which was also dismissed, leading to the filing of the present appeal by the legal representatives of Jagrotam Dass @ Narotam Dass.

8. Learned counsel for the parties were heard.

9. Sh. Pritam Saini, learned counsel representing the appellants submitted that both Courts erred in decreeing the suit filed by the plaintiff. It was submitted that both Courts lost sight of the settled position of law that a suit filed against a dead person was a nullity. Learned counsel submitted that the loan was advanced on 07.02.1984 and the suit was filed on 06.02.1987 whereas Jagrotam Dass @ Narotam Dass had expired on 21.04.1986. It was submitted that an application under Order 22 was filed on 29.08.1987 and an application under Section 5 of the Limitation Act was filed on 27.10.1987. It was submitted that the trial Court erroneously allowed these applications losing the sight of the fact that the said applications were barred by limitation and were even otherwise not maintainable since Jagrotam Dass @ Narotam Dass had expired prior to the filing of the suit and if at all, an application had to be filed, the same had to be filed under Order I Rule 10 CPC. Learned counsel submitted that in any case, once the suit was filed against a dead person, the same would be a nullity.

10. No other argument was raised.

11. In support of his contentions, learned counsel placed reliance upon the judgment of Supreme Court of India in case ***of Pankajbhi Rameshbhai Zalavadia Vs. Jethabhai Kalabhai Zalavadiya (deceased) through LRs and others, 2017(4) RCR(Civil) 777***, Judgment of Delhi High Court in case of ***Pratap Chand Mehta Vs. Smt. Krishna Devi Mehta (deceased by LRs), 1988 AIR Delhi 267*** and judgments of this Court in case of ***Sumer Singh Vs. Kashi Ram, 1994(1) R.R.R. 48 and Kaley (deceased) and another Vs. Harpal and another, 1992(1) RRR 146***.

12. *Per contra*, learned counsel representing the respondents submitted that there is no illegality or infirmity in the findings recorded by

the Courts vide which the suit was decreed. It was submitted that an application under Order I Rule 10 CPC could have been filed and keeping in view the provisions of Section 21 of the Limitation Act, the Court always had the power of treating the parties to have been impleaded from a previous date i.e., from the date of filing of the suit. Learned counsel submitted that the suit had been filed within limitation and that at no point of time, any information was received by the plaintiff as regards the death of Jagrotam Dass @ Narotam Dass which could have led the plaintiff to file a suit against the legal representatives of Jagrotam Dass and not against Jagrotam Dass who had already expired. In support of his contentions, learned counsel placed reliance upon the judgments of Supreme Court of India in case of *Karuppaswamy Vs. C. Ramamurthy, 1993 AIR(Supreme Court) 2324* and *Pankajbhai Rameshbhai Zalavadia Vs. Jethabhai Kalabhai Zalavadiya (deceased) through LRs and others, 2017(4) RCR(Civil) 777*.

13. I have considered the submissions made by learned counsel for the parties and have perused the record.

14. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of *Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157*, followed by the judgments in the case of *Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317* and *Satender and others V/s Saroj and others, 2022(12) Scale 92*. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

15. The short issue involved in the present case is as to whether on account of the suit having been filed against a dead person, the same would be a nullity. It would be relevant to notice here that no argument has been addressed on any other point *vis* the issue of Jagrotam Dass and Narotam Dass, the advancement of loan, defendant No.4 being a guarantor etc. Even otherwise, I have gone through the findings on the said issues and do not find any illegality in the same.

16. Coming to the issue of the suit having been filed against a dead person, it is no doubt settled that such a suit filed against a dead person is a nullity. However, there are certain distinctive features in the present matter. First of all, the suit was filed not against a sole defendant but was filed against two persons namely Jagrotam Dass and the guarantor-G.S. Dhami. Under the circumstances, the suit would not abate.

17. Be that as it may, the loan was taken on 07.02.1984. The suit was filed on 06.02.1987 i.e., within the period of limitation. The application under Order 22 CPC was filed on 29.08.1987 and an application for condonation of delay in filing the application was moved on 27.10.1987. No doubt, an application under Order 22 CPC was strictly not maintainable because Order 22 CPC operates when the plaintiff or defendant expires during the pendency of the suit. To implead the legal representatives of Jagrotam Dass, the correct application to be filed was an application under Order 1 Rule 10 CPC.

18. Now the question which would arise is as to whether the mere non-mentioning of the correct provision would lead to non-suiting the plaintiff. In the considered opinion of this Court, the answer is in the negative. The nomenclature of an application or the mere mentioning of a

provision, though important and essential, is not binding to the extent that its non-mentioning would non-suit a party. It is well known that pleadings in mufassil Courts are not expected to be beyond any defect. It is often noticed that either a wrong provision of the statute is mentioned or sometimes no provision is mentioned whereas on other occasions only Section 151 CPC is mentioned in civil cases. To non-suit a party on this ground alone would amount to adopting a hyper technical approach. It has to be borne in mind that it was a suit for recovery filed by the plaintiff. No information about the death of Jagrotam Dass was given to the plaintiff by the legal representatives of Jagrotam Dass. Under the circumstances, they had no means to detect that the person who had taken the loan had expired. They, in the normal course, instituted a suit. When, it came to the notice of the plaintiff that Jagrotam Dass had expired, they moved an application under Order 22 CPC for impleading the legal representatives of Jagrotam Dass in the suit. This application was moved on 29.08.1987 and subsequently an application for condonation of delay was also filed on 27.10.1987. The same was allowed. Here the provisions of Section 21 of the Limitation Act, 1963 would also come in which reads as under:-

***“21. Effect of substituting or adding new plaintiff or defendant.—***

***(1) Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:***

***Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.***

***(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”***

The proviso to Section 21(1) of the Limitation Act shows that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith, it may direct that the suit as regards such plaintiff or defendant would be deemed to have been instituted on any earlier date. This Court is satisfied that the legal representatives of Jagrotam Dass were not brought on record earlier on account of the factum of the death of Jagrotam Dass not having come to the notice of the plaintiff and, therefore, the plaintiff cannot be non-suited on this ground. Coming back to the non-mentioning of the correct provision, the same would also not make a difference and non-suiting the plaintiff on this ground would amount to miscarriage of justice on account of a hyper technical approach being adopted.

19. The Supreme Court of India was also seized of a similar issue in the case of ***Pankajbhi Rameshbhai Zalavadia Vs. Jethabhai Kalabhai Zalavadiya (deceased) through LRs and others*** (supra). In that case, a suit was filed on 24.06.2008 seeking to set aside a sale deed executed in March, 1995 in respect of a parcel of land which had been purchased by defendant No.1 therein. As on the date of the filing of the suit, defendant No.7 had already expired. The trial Court therefore, ordered that the suit had abated as against defendant No.7. An application under Order 22 Rule 4 CPC was filed to bring on record the legal representatives of defendant No.7. The trial Court rejected the application holding that such an application could have been moved only if defendant No.7 had expired during the pendency of the

proceedings further holding that a suit against a said person was a nullity. Thereafter, an application under Order I Rule 10 CPC was filed. This application was also dismissed by the trial Court and the order was affirmed by the High Court. The issue which was raked up was that once an application under Order 22 CPC had been dismissed, the application under Order I Rule 10 CPC would be barred by the principle of *res judicata*. The Supreme Court examined the larger issue that whether the legal representatives of one of the defendants could be impleaded under Order 1 Rule 10 CPC where such defendant had expired prior to the filing of the suit and more so when the application under Order 22 Rule 4 CPC had been dismissed. The Supreme Court of India then referred to the provisions of Section 151 and 153 CPC. It was ultimately held that the application should be allowed. It was held that the trial Court, while dismissing the application under Order 22 Rule 4 CPC should have treated the application as one being under Order 1 Rule 10 CPC in order to do justice between the parties. The findings recorded by the Supreme Court of India, in the considered opinion of this Court would squarely apply to the present case as well:-

***“14. In the matter on hand, though the trial court had rightly dismissed the application under Order 22, Rule 4 of the Code as not maintainable at an earlier point of time, in our considered opinion, it needs to be mentioned that the trial Court at that point of time itself could have treated the said application filed under Order 22, Rule 4 of the Code as one filed under Order 1, Rule 10 of the CPC, in order to do justice between the parties. Merely because of the non-mentioning of the correct provision as Order 1, Rule 10 of the Code at the initial stage by the advocate for the plaintiff. The parties should not be made to suffer. It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice.***

*Ultimately, the Courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1, Rule 10 CPC speaks about judicial discretion of the Court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add any one as a plaintiff or defendant if it finds that such person is a necessary or proper party. The Court under Order 1, Rule 10 (2) of the Code will of course act according to reason and fair play and not according to whims and caprice. The expression 'to settle all questions involved' used in Order 1, Rule 10 (2) of the Code is susceptible to a liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject matter thereof. The Parliament in its wisdom while framing this rule must be held to have thought that all material questions common to the parties to the suit and to the third parties should be tried once for all. The Court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. There cannot be any dispute that the party impleaded must have a direct interest in the subject matter of litigation. In a suit seeking cancellation of sale deed, as mentioned supra, a person who has purchased the property and whose rights are likely to be affected pursuant to the judgment in the suit is a necessary party, and he has to be added. If such purchaser has expired, his legal representatives are necessary parties. In the matter on hand, since the purchaser of the suit property, i.e., defendant no.7 has expired prior to the filing of the suit, his legal representatives ought to have been arrayed as parties in the suit while presenting the plaint. As such impleadment was not made at the time of filing of the plaint in view of the fact that the plaintiff did not know about the death of the purchaser, he cannot be non-suited merely because of his ignorance of the said fact. To do justice between the parties and as the legal representatives of the purchaser of the suit property are necessary parties, they have to be impleaded*

*under Order 1, Rule 10 of the Code, inasmuch as the application under Order 22, Rule 4 of the Code was not maintainable.*

*As mentioned supra, it is only if a defendant dies during the pendency of the suit that the provisions of Order 22, Rule 4 of the Code can be invoked. Since one of the defendants i.e. defendant No.7 has expired prior to the filing of the suit, there is no legal impediment in impleading the legal representatives of the deceased defendant No.7 under Order 1, Rule 10 of the Code, for the simple reason that the plaintiff in any case could have instituted a fresh suit against these legal representatives on the date he moved an application for making them parties, subject of course to the law of limitation. Normally, if the plaintiff had known about the death of in granting the application filed by the plaintiff under Order 1, Rule 10 of the Code discloses, with great respect, a hyper-technical approach which may result in the miscarriage of justice. As the heirs of the deceased defendant no.7 were the persons with vital interest in the outcome of the suit, such applications have to be approached keeping in mind that the Courts are meant to do substantial justice between the parties and that technical rules or procedures should not be given precedence over doing substantial justice. Undoubtedly, justice according to the law does not merely mean technical justice but means that law is to be administered to advance justice.*

*15. Having regard to the totality of the narration made supra, there is no bar for filing the application under Order 1, Rule 10, even when the application under Order 22, Rule 4 of the Code was dismissed as not maintainable under the facts of the case. The legal heirs of the deceased person in such a matter can be added in the array of parties under Order 1, Rule 10 of the Code read with Section 151 of the Code subject to the plea of limitation as contemplated under Order 7, Rule 6 of the Code and Section 21 of the Limitation Act, to be decided*

***during the course of trial. In view of the above, the impugned judgment of the High Court is set aside. The appeal is allowed. The Trial Court is directed to implead the legal representatives of deceased defendant no. 7 and bring them on record, subject to the plea of limitation as contemplated under Order 7, Rule 6 of the Code, as well as under Section 21 of the Limitation Act, 1963, to be decided during the trial.”***

In this judgment, the Supreme Court of India also referred to the judgment of ***Karuppaswamy Vs. C. Ramamurthy*** (supra), wherein also a similar view had been taken. In that case also, a suit was recovery was filed six weeks after the defendant had expired. An application was moved by the plaintiff under Order 22 Rule 4 CPC to implead the legal representatives of the defendant. Another application was thereafter moved to change the provision from Order 22 Rule 4 CPC to Section 151 and 153 CPC. The trial Court dismissed the application holding that the same had become barred by time. Two revision petitions were preferred before the High Court. The High Court accepted the case of the plaintiff holding that he had, in the facts and circumstances, acted in good faith and thus the provisions of proviso to Section 21(1) were attracted. This view was upheld by the Supreme Court of India.

20. In view of the categorical decisions of the Supreme Court of India, the judgments relied upon by learned counsel for the appellants in the case of ***Sumer Singh Vs. Kashi Ram*** (supra) delivered by a Coordinate Bench of this Court, ***Pratap Chand Mehta Vs. Smt. Krishna Devi Mehta (deceased by LRs)*** (supra) delivered by the Delhi High Court and the judgment in the case of ***Kaley (deceased) and another Vs. Harpal and another*** (supra) delivered by a Coordinate Bench of this Court would not come to the aid of the appellants, the said judgments, even otherwise having

been passed prior to the judgments passed by the Supreme Court of India. The dictum laid down by the Supreme Court of India, being binding upon one and all, is to be followed.

In view of the aforementioned facts and circumstances, I do not find any illegality in the judgments and decrees under challenge. The appeal is, therefore, found to be bereft of merit and is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)  
JUDGE

**Pronounced on: 03.04.2025**  
*Rekha*

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|----------------------------------|---|---------------|
| <i>Whether speaking/reasoned</i> | : | <i>Yes/No</i> |
| <i>Whether reportable</i>        | : | <i>Yes/No</i> |