



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

CR-1237-2023(O&M)
Date of decision: 24.03.2026

Sarabjit Kaur

... Petitioner

Versus

Swaran Kaur (deceased) through her LR

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Mohit, Advocate, for
Mr. N.S. Diwana, Advocate,
for the petitioner.

Mr. Vipul Aggarwal, Advocate,
for the respondent.

VIKRAM AGGARWAL, J. (ORAL)

The instant revision petition, preferred under Article 227 of the Constitution of India, assails the order dated 15.11.2022 (Annexure P-1), passed by the Court of Civil Judge, (Jr. Divn.), (NRI Cases), Jalandhar, vide which the application filed by one Jaswinder Kaur for impleading her as legal representative of the sole plaintiff (Swaran Kaur) was allowed.

2. Notably, Swaran Kaur is the mother-in-law of the present petitioner/defendant (Sarabjit Kaur). The said Swaran Kaur instituted a suit (Annexure P-5) against the present petitioner/defendant for issuance of a declaration to the effect that she was the exclusive owner in possession of the properties (fully described in the plaint) situated at Village Bal, Tehsil and District Jalandhar, on the basis of a registered Will dated 28.04.2003, executed by her husband, namely, Bhawikhan Singh in her favour. A declaration was also sought that Narinder Pal Singh was not the son of



Bhawikhan Singh and was not born from the lawful wedlock of Bhawikhan Singh and the respondent/plaintiff. Other declaration as regards settlement dated 22.05.2004 was also sought. A declaration was sought that the judgment and decree dated 09.10.2012, passed in the case titled as “**Sarabjit Kaur v. Swaran Kaur**”, had been obtained by fraud. Consequential relief of permanent injunction was also prayed for.

3. It has been averred that during the pendency of the suit, Swaran Kaur expired and one Jaswinder Kaur moved an application (Annexure P-6) claiming herself to be the legal representative of said Swaran Kaur on the basis of a Will dated 21.07.2005.

4. The said application was opposed by way of a reply (Annexure P-7).

5. However, the application moved under Order 22 Rule 4 CPC was allowed by way of the impugned order dated 15.11.2022 (Annexure P-1).

6. It has been averred that previously also a suit had been instituted by the petitioner/defendant titled as “**Sarabjit Kaur v. Swaran Kaur**”, which was decreed on 09.10.2012. Appeal against the said judgment and decree was dismissed on 12.08.2014 and RSA-6349-2015 was also dismissed on 28.04.2015.

7. It has further been averred that under the circumstances, there was no occasion to file the second suit. It is the case of the petitioner that without following the procedure envisaged under Order 22 Rule 5 CPC, the application for impleading Jaswinder Kaur as the legal representative of Swaran Kaur was allowed.



8. I have heard learned counsel for the parties.

9. Learned counsel for the petitioner has strenuously urged that the impugned order, vide which the application under Order 22 Rule 4 CPC was allowed, is not sustainable. It has been argued that objections had duly been raised by the petitioner/defendant in reply to the application, and that on the basis of an alleged Will, a stranger could not have been impleaded as legal representative of Swaran Kaur. Further, the procedure envisaged under Order 22 Rule 5 CPC ought to have been followed.

10. Per contra, learned counsel for the respondent/plaintiff submits that there is no illegality in the impugned order, and that the application for impleading Jaswinder Kaur as a legal representative of Swaran Kaur had been allowed only for the purpose of pursuing the suit.

11. I have considered the submissions made by learned counsel for the parties.

12. Concededly, there is no relation between Swaran Kaur and Jaswinder Kaur. At least, it has not so been stated anywhere. After the death of Swaran Kaur, Jaswinder Kaur moved an application for being impleading as legal representative of Swaran Kaur on the basis of a Will dated 21.07.2005 stated to have been executed by Swaran Kaur in her favour. The said application was opposed by the present petitioner/defendant stating that Jaswinder Kaur was not the legal representative of deceased Swarn Kaur and no Will had been executed by her. Other averments had also been made.

13. The trial Court, however, without considering the matter from the correct perspective, allowed the application with the following observations:-



“4. The copy of death certificate of deceased plaintiff Swaran Kaur has been placed on record which shows that she expired on 16.09.2021 at Forest Lodge, 20 Forest Road East Nottingham. The applicant has stated herself to be the legal heir of Swaran Kaur on the basis of a Will dated 21.07.2005. So far as the contention of the counsel for the defendant Sarabjit Kaur is concerned, that, the Will which has been claimed by the applicant is a forged and fabricated Will, the same can be considered at the relevant point of time as it is a settled proposition of law that propounder of the Will has to prove the same on the basis of cogent evidence to that effect. The entitlement over the property of the applicant shall depend upon the outcome of the evidence in regard to the Will. The purpose of impleadment of Lrs is only to give them an opportunity to contest the cause of the actual claimant who has now passed away and mere impleadment as LR does not amount to determination of the rights of the Lrs. In view of the above discussion the present application for impleading Jaswinder Kaur as LR of plaintiff Swaran Kaur is allowed to enable her to plead the case of Swaran Kaur on her behalf. Amended memo be filed. Documents annexed with the plaint are also ordered to be supplied to the defendant so as to enable her to file befitting written statement and reply. Adjourned to 19.12.2022 for supplying documents as already ordered.”

14. In Smt. Sahab Kaur v. Avtar Singh and others, 2005(3) RCR (Civil) 825, a coordinate Bench, while referring to the provisions of Order 22 Rule 5 CPC, held as under:-

“5. I have given my thoughtful consideration to the contentions raised by the learned counsel appearing for the parties. In order to appreciate the contentions of learned counsel, it is appropriate to notice the provisions of Order 22 of the Civil Procedure Code (C.P.C' for short) which provides for death, marriage and insolvency of the parties. Rule 5 Order 22 CPC. provides for determination of question as to legal representatives. The same reads as under:-



“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.”

6. A perusal of the above shows that where a question arises as to whether any person is or is not the legal representative of the deceased plaintiff or deceased defendant such question is to be determined by the Court. In terms of the proviso if such question arises before the Appellate Court, it may remit the matter to the subordinate Court to try the question and to return the record together with evidence, if any, recorded at such trial with its findings and reasons, therefor. Order 22 Rule 5 thus provides the procedure for determining the legal representative of the deceased plaintiff or defendant. Section 2(11) C.P.C. defines ‘legal representative’ to mean a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased person and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued. Therefore, where there is a dispute as to who is the legal representative of a deceased party to the suit, it is incumbent upon the Court to determine and decide as to who is the legal representative. The decision, however, is limited and is only for the purpose of carrying on with the suit. The words, "such question shall be determined by the Court," in Rule 5 Order 22 enjoin that for the purpose of determining as to who is the legal representative, the Court, wherever necessary, must hold an enquiry in which evidence may even be adduced. In the case of a dispute regarding Will, the question requires to be determined by a limited enquiry by adducing evidence. The



determination of the question of legal representative, however, does not confer any right to succession or heirship to the estate of the deceased. Therefore, evidently the question as to the authenticity of the Will for the limited purpose of impleading the legal representatives of the deceased is to be gone into in accordance with the provisions of Order 22 Rule 5 Civil Procedure Code.

7. In the case in hand the respondent Nos. 1 and 2 claim to be the legal representatives of Smt. Bachni Devi on the basis of a registered Will dated 27.10.1998, and this question is to be determined after leading evidence for the limited purpose of impleading the legal representatives in accordance with the procedure provided under Order 22, Rule 5 C.P.C. This exercise had admittedly not been carried out by the learned trial Court. Therefore, the impugned order dated 28.7.2003 suffers from a jurisdictional error. As such the impugned order dated 28.7.2003 is not sustainable in law.”

15. In the present case also, the question as to whether Jaswinder Kaur was the legal representative of Swaran Kaur or not, was to be determined as per the procedure envisaged under Order 22 Rule 5 CPC. The exercise was admittedly not carried out by the trial Court. Accordingly, the impugned order dated 15.11.2022 suffers from a jurisdictional error and is, therefore, not sustainable.

16. For the foregoing reasons, the instant revision petition is allowed. The order dated 15.11.2022 (Annexure P-1) is set aside. A direction is issued to the Court concerned to take steps to determine the legal representative of deceased Swaran Kaur in accordance with the procedure envisaged under Order 22 Rule 5 CPC. However, nothing stated hereinabove shall be construed to be an opinion on the merits of the controversy between the parties.



17. Pending application(s), if any, also stands disposed of.

(VIKRAM AGGARWAL)
JUDGE

March 24, 2026

Rajan

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No