

2026:PHHC:006882



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

RSA-3719-2023(O&M)
Reserved on: 17.11.2025
Pronounced on: 15.01.2026
Uploaded on: 20.01.2026

KANTA DEVI @ KANTA RANI & ANR.

...Appellants

Versus

RAMESH KUMAR & ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present:- Mr. Rajan Bansal, Advocate, for the appellants.

Mr. Tushar Sharma, Advocate,
for the respondents.

VIKRAM AGGARWAL, J.

This is defendants' appeal against the judgment and decree dated 18.09.2023 passed by the Court of District Judge, Barnala allowing the appeal filed by the plaintiff against the order dated 03.01.2018 passed by the Court of Additional Civil Judge (Senior Division) Barnala, whereby the suit for mandatory injunction filed by the plaintiff, was dismissed as having abated.

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

3. The plaintiff filed a suit for mandatory injunction directing the defendant (Raj Kumar) to deliver the vacant possession of the shops fully detailed in the head note of the plaint (hereinafter referred to as 'the suit property') situated within the limits of Municipal Council, Barnala. It was claimed

that the defendant was in possession of the suit property as a licensee and his licence had already been revoked by the plaintiff.

4. Defendant-Raj Kumar contested the said suit by filing a written statement controverting the averments made in the plaint, denying the averments made therein.

5. The plaintiff filed replication to the written-statement filed by the defendant.

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

1. Whether plaintiff is entitled for mandatory injunction as prayed for? OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether plaintiff has no locus-standi and cause of action to file present suit? OPD
4. Whether suit is not maintainable in the present form? OPD
5. Whether suit is bad for non-joinder of necessary parties? OPD
6. Whether dimensions and boundaries of shops have wrongly mentioned by the plaintiff? OPD
7. Whether suit is time barred? OPD
8. Relief.

7. When the suit was at the stage of evidence, an application was filed by the counsel for the defendant stating therein that defendant-Raj Kumar had expired on 01.10.2017. It was further pleaded that the relief of mandatory injunction was sought against defendant-Raj Kumar, being a licensee of the suit property, which as per the plaintiff had already been revoked and the same had come to an end with the death of the defendant and as such the suit was liable to abate.

8. The said application was contested by the plaintiff by filing a reply, contending therein that the same had not been filed by a competent person. The factum of death of defendant-Raj Kumar was admitted, but it was denied that suit was liable to abate.

9. The trial Court, vide order dated 03.01.2018, while allowing the said application, dismissed the suit as having abated due to the death of defendant-Raj Kumar.

10. Aggrieved against the said order, the plaintiff filed an appeal. Vide judgment and decree dated 18.09.2023, the said appeal was allowed by the first Appellate Court and the matter was remanded to the trial Court to decide the suit afresh, after hearing counsel for the parties.

11. Learned counsel for the parties were heard and the record was perused.

12. Learned counsel for the appellants argued that the findings recorded by the first Appellate Court are totally illegal, perverse and against the law and are, thus, liable to be set aside. It was argued that no appeal lies from the order of abatement passed by the trial Court. While referring to the provisions of Order 43 Rule 1(k) CPC, it was argued that an appeal would lie when an order is passed under Order 22 Rule 9 CPC refusing to set aside the abatement or dismissal of the suit. It was, thus, argued that the only remedy available to the plaintiff was to file an application before the trial Court for setting aside the abatement order, which course was not followed by the plaintiff. It was further argued that the first Appellate Court erred in law

in preparing a decree against a dead person. It was also argued that no endeavour whatsoever, was made by the plaintiff to bring on record the legal representative(s) of deceased-Raj Kumar. It was also argued that the relief of mandatory injunction had been sought only against the deceased defendant Raj Kumar and not against his legal heirs and, therefore, the trial Court had rightly dismissed the suit, the same having abated. In support of his contentions, learned counsel for the appellants placed reliance upon the judgments of this Court in **Dul Gir Chela Shri Harjinder Gir Vs. Harchand Gir, 1993(1) PLR 673** and **Balbir Singh Vs. Rajwinder Kaur, 2010(4) PLR 192** and the judgment of the Hon'ble Supreme Court in **Gurnam Singh (D) Thr. Lrs & Ors. Vs. Gurbachan Kaur (D) by Lrs. & Ors., (2017)13 SCC 414.**

13. On the other hand learned counsel representing the respondents, while defending the findings recorded by the first Appellate Court, vehemently argued that in view of the amended provisions of Order 22 Rule 4(3) CPC, as applicable in the States of Punjab and Haryana, no suit shall abate and the judgment shall be pronounced notwithstanding the death of the defendant and shall have the same force and effect as if it had been pronounced before the death took place. It was also argued that since the plaintiff had filed a suit for mandatory injunction, the appellants being legal heirs of defendant-Raj Kumar, cannot be heard saying that relief sought in the suit was only against defendant-Raj Kumar and not against his estate.

14. I have considered the submissions of learned counsel for the parties.

15. The main emphasis of the learned counsel for the appellants is on the provisions of Order 22 Rule 4(3) CPC to argue that the appeal against the order passed by trial Court was not maintainable. However, as has been observed by the first Appellate Court, in view of the amendment to the provisions of Order 22(4)(3) CPC as regards their applicability to the States of Punjab and Haryana, the said argument is devoid of merit.

16. The trial Court had simply dismissed the suit on the ground that the defendant had passed away and that there was no threat from any legal heir(s) of the defendant. Still further, order dated 03.01.2018, had been passed by the trial Court on an application filed by the counsel for the defendant.

17. The provisions of Order 22 Rule 4(3) CPC, stipulate that where within the time limited by law, no application is made under Sub-Rule (1), the suit shall abate as against the deceased-defendant. However, the provisions of Order 22 Rule 4(3), as regards their applicability to the States of Punjab & Haryana were amended w.e.f., 01.02.1997. The said amended provisions read as under:-

“Order 22

(i) In Rule 4, sub-Rule 3 has been substituted as follows:-

“(3) Where within the time limited by law no application is made under sub-rule (1) the suit shall not abate as against the deceased-defendant and judgment be pronounced notwithstanding the death and shall have the same force and effect

as if it had been pronounced before the death took place”.

(ii) In Rule 4 the following has been inserted as sub-Rules (4), (5) and (6) namely:-

(4) If a decree has been passed against a deceased-defendant a person claiming to be his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware of the suit or that he had not intentionally failed to make an application to bring himself on the record, the Court shall set aside the decree upon such terms as to costs or otherwise as it think fit.

5. Before setting aside the decree under sub-Rule (4) the Court must be satisfied prima-facie that had the legal representative been on the record a different result might have been reached in the suit.

6. The provisions of Section 5 of the Indian Limitation Act (36 of 1963) shall apply to applications under sub-Rule (4).”

18. It may be noticed that the application for abatement of the suit was filed by the counsel for the defendant. In the appeal filed by the plaintiff against the order dated 03.01.2018, defendant-Raj Kumar was represented by his wife and son (i.e., the appellants in the present appeal).

19. Firstly, the first Appellate Court rightly found that the application for abatement of the suit was not filed by a competent person. Secondly, in view of the amendment in the provisions of Order 22 Rule 4(3) CPC, as applicable to the States of Punjab & Haryana, on the death of the defendant, the suit shall not abate and rather, the same shall be decided and the

judgment pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place. The first Appellate Court rightly found that the provisions of Order 43 Rule 1(k) CPC, would not be applicable as in the instant case, the trial Court dismissed the suit as having abated on account of the death of the defendant and not the plaintiff.

20. Still further, it may be noticed that after passing of the impugned judgment and decree by the first Appellate Court, the appellants had been impleaded as legal heirs of the deceased-Raj Kumar vide order dated 16.08.2024 passed by the trial Court.

21. I have perused the judgments, reliance upon which was placed by learned counsel for the appellants. The said judgments would not come to the aid of the appellants since they were passed in the case(s) of Mahantship, which was rightly held as a personal right and injunction, which again was a personal cause of action. In the present case, it is a case of licence and concededly, the legal representatives of the defendant continued to be in possession of the suit property. Under the circumstances, the suit would not be liable to be dismissed on account of the same having abated and a full trial would be essential. Whether the plaintiff would succeed on merits or not, would be a different issue, but in the considered opinion of this Court, in view of the discussion in the preceding paragraphs, the suit should not could not have been dismissed as having abated.

22. In the considered opinion of this Court, the findings recorded by the first Appellate Court cannot be said to be suffering from any patent illegality, which may warrant interference by this Court in the present Regular Second Appeal.

23. In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is, accordingly, dismissed.

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

(VIKRAM AGGARWAL)
JUDGE

15.01.2026
ds

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