counsel : *Pratibha Yadav, Manoj Tanwar*

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2014 PLRonline 0216

PUNJAB AND HARYANA HIGH COURT

Before : Justice G.S. Sandhawalia.

RAM PHAL and others – Petitioner

Versus

HARBANS LAL and others – Respondents

CR. No. 5672 of 2013 (O & M).

14.10.2014.

CPC O. 22 R. 3 – Abatement – There has been an amendment by this Court vide notification dated 21.02.1992 which has taken w.e.f. 04.02.1992 wherein, it was provided that where the legal heirs of the deceased are not brought on record within the prescribed period, the suit shall not abate for the said reason under Order 22, Rule 3 CPC – If application was not filed within the prescribed period of 90 days for bringing on record the legal representatives, it could not be said that the suit stood abated.

Cases Referred :-

1. *Amro v. Parbati, 2000 (4) RCR (Civil) 671.*
2. *Balraj Sharma v. Shanti, 2011 (5) RCR (Civil) 617.*
3. *Bibijan v. Murlidhar, 1995 (2) RRR 354.*
4. *Kali Ram v. Mangat Rai,* ***(2001-2)128 P.L.R. 481***
5. *Lal Chand v. Raghu Nath,* ***(2009-3)155 PLR 584****.*
6. *Lal Chand v. Paras Ram (D) by L.Rs., 2000 (4) JT 408.*
7. *Sukhdev Singh v. Charanjit Singh, 2012 (1) RCR (Civil) 932. decided on 21.2.1992.*

For the Petitioner :- Pratibha Yadav, Advocate. For the Respondent Nos. 13 and 14 :- Manoj Tanwar, Advocate.

ORDER

G.S. Sandhawalia, J. – The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 22.08.2013 (Annexure P-2) passed by the Civil Judge (Jr. Divn.), Mahendergarh whereby, the application for impleading the legal representatives of the deceased-plaintiffs, Bishambar, Kishori Lal, Mangal Ram and

Satnarain, plaintiffs no. 1, 3, 5 and 7 respectively was dismissed and the case was adjourned for plaintiffs' evidence by holding that the death of one of the plaintiffs did not make the suit abate and there was a right to sue which survives. The present revision petition has been filed by legal representatives of the said deceased-plaintiffs.

2. A perusal of the paper book would go on to show that the plaintiffs had filed a suit for declaration that they are owners in possession as co-sharers of the agricultural land measuring 16 kanals and 6 marlas. The said suit was instituted on 03.01.2008. The plaintiffs no. 1, 3, 5 and 7 expired in the years 2010 and 2013 and resultantly, the application dated 08.07.2013 for impleading the legal heirs was filed. The said application was opposed by the defendants on the ground that the limitation was only 90 days and the suit had to abate. Resultantly, the said impugned order has been passed whereby, the application to implead them has been dismissed but the suit regarding the other plaintiffs was to proceed. The Trial Court relied upon the judgments of the Apex Court in ***Bibijan and others v. Murlidhar and others, 1995 (2) RRR 354*** and ***Lal Chand v. Paras Ram (D) by L.Rs. and others, 2000 (4) JT 408*** to pass the impugned order while dismissing the application.

3. The said view is patently not sustainable in view of the fact that there has been an amendment by this Court vide notification dated 21.02.1992 which has taken w.e.f. 04.02.1992 wherein, it was provided that where the legal heirs of the deceased are not brought on record within the prescribed period, the suit shall not abate for the said reason under Order 22, Rule 3 CPC. The said fact was noticed by this Court in ***Amro v. Parbati, 2000 (4) RCR (Civil) 671***; ***Kali Ram v. Mangat Rai, (2001-2)128 P.L.R. 481*** and in ***Lal Chand and others v. Raghu Nath and others, (2009-3)155 PLR 584,*** and this Court held that there is no limitation for impleading the legal heirs. The relevant observations in Lal Chand's case (supra) read thus:-

"7. As per the amendment, where one of two or more plaintiffs dies and right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application in that behalf, shall cause the legal representatives of the deceased plaintiff to be made a party and shall proceed with the suit. The amendment further speaks that even if no application is filed within time, then the suit shall not abate against the deceased plaintiff and the judgment could be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between deceased and the pleader in that event shall continue to subsist."

4. Similarly in ***Balraj Sharma and others v. Shanti and others, 2011 (5) RCR (Civil) 617***, it was noticed that where the defendant had died and legal representatives were not brought on record, it could not invalidate the judgment of the Trial Court. In ***Sukhdev Singh v. Charanjit Singh and others, 2012 (1) RCR (Civil) 932,*** the amendment dated 21.02.1992 was discussed. It was held that if application was not filed within the prescribed period of 90 days for bringing on record the legal representatives, it could not be said that the suit stood abated. The relevant observations read thus:-

"23. Hence, in view of these facts, it cannot be said that the suit filed by respondent-plaintiff stood abated as application for bringing on record legal representatives of deceased-plaintiff was not filed within prescribed period of limitation of 90 days or that the application for bringing on record legal representatives of deceased -defendant (Subhash Chander) was also not filed within prescribed period of limitation. There is no dispute that right to sue survives to legal representatives of deceased-plaintiff and the right to sue also survives qua legal representatives of deceased-defendant -Subhash Chander. Hence, there is no limitation for bringing on record legal representatives of the deceased litigants."

5. The judgment in *Bibijan's case* (supra) would be of no help since once there is an amendment made by this Court, the limitation period of 90 days would not be applicable.

6. Similarly, the judgment in *Paras Ram's case* (supra) would also not be applicable.

7. Keeping in view the amendment made and the settled principle of law, the Trial Court was not justified in dismissing the application. Accordingly, the present revision petition is allowed the order dated 22.08.2013 (Annexure P-2) is quashed to the extent whereby, the application for bringing on record the legal representatives of the plaintiffs had been disallowed. The Trial Court shall pass a fresh order on the said application keeping in view the observations made herein and the judgments discussed above.

SS