



CPC O. 9 R. 13 - Exparte judgment - Deceased not heard of for last more than seven years, as such, he was presumed to be dead and plaintiff was entitled to get property - Only arrayed General Public was required to implead relatives. | 1

DARBARA SINGH (SINCE DECEASED) THROUGH HIS LRS v. GENERAL PUBLIC, (2022-1)205 PLR 469

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice H.S. Madaan.

DARBARA SINGH (SINCE DECEASED) THROUGH HIS LRS and others - Petitioners,

Versus

GENERAL PUBLIC and others - Respondents.

CR-1901-2021(O&M)

Civil Procedure Code, 1908 (V of 1908) Order 9, Rule 13 - Setting aside [exparte judgment](#) - That deceased had left home and has not been seen or heard of by persons, who would have ordinarily done so for the last more than seven years, as such, he was presumed to be dead and plaintiff was entitled to get landed property - Only arrayed General Public was required to implead relatives - The version of applicants needs to be known and considered and then the dispute can be adjudicated in a proper and appropriate manner - Though applicants have not been impleaded as defendants by the plaintiff but they can certainly appear in the Court and give their version being members of the general public - Even otherwise, they can be brought on record as defendants being necessary parties - Ex parte decree set aside - Order upheld.

Ms.Navreet Dhaliwal, for the petitioners.

H.S. Madaan, J. - (7th October, 2021) - Case taken up through video conferencing.

CM-8459-CII-2021

This is an application for impleading legal representative of Joginder Singh son of Darbara Singh.

Heard.

The application is allowed and legal representatives of Joginder Singh are ordered to be brought on file. Memo of parties be taken on record.

CR-1901-2021

Briefly stated, the facts of the case are that plaintiff Darbara Singh (since dead) now represented by his legal representatives had filed a suit against General Public and others seeking a declaration that Jeewan Singh son of Mangal Singh (related to the plaintiff as his real uncle), who was unmarried and issueless having left the house about 30 years earlier had not been heard of and seen for the last
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more than seven years by relatives or co-villagers and was presumed to be dead, in that way, the plaintiff had become absolute [owner](#) in possession of the landed property in the name of Jeewan Singh, situated at village Allia Kalan-I, Tehsil and District Mansa, as such, he was entitled to get ownership of that land transferred in his name.

2. Notice of that suit was given to general public. However, none from general public appeared to offer a contest. After recording the ex-parte [evidence](#), learned Civil Judge (Sr.Divn.), Mansa vide judgment dated 28.8.2014 decreed the suit ex-parte.

3. Subsequently, Sukhdev Singh and nine others claiming themselves to be legal heirs of Jeewan Singh had filed an application under Order 9 Rule 13 [CPC](#) for setting aside of that ex-parte judgment and decree contending that plaintiff was aware of the fact that such applicants were LR's of Jeewan Singh and as such necessary party in the suit but even then, he by suppression of material facts and making misrepresentations without impleading the present applicants got an ex-parte decree regarding which the applicants came to know on 30.9.2014, when they got copy of jamabandi from Halqa Patwari and thereafter filed the present application.

4. The application was resisted by the plaintiff by filing written reply.

5. Issues on merits were framed. The parties were given adequate opportunities to lead evidence in support of their respective claims and then vide order dated 8.3.2017, the application was accepted and ex-parte judgment and decree were set aside.

6. Feeling aggrieved by that order, the LR's of deceased plaintiff Darbara Singh have approached this Court by way of filing the present [revision](#) petition.

7. I have heard learned counsel for the revisionists besides going through the record.

8. At the very outset, it may be stated that the applicants claimed to be LR's of Sh. Jeewan Singh deceased regarding whose estate the plaintiff had brought the suit. He had not impleaded any near relative of Jeewan Singh in the suit and had arrayed general public as a respondent. According to applicants, Jeewan Singh had a brother, namely, Hardit Singh and said Hardit Singh had three sons, namely, Prem Singh, Bihara Singh and Darbara Singh; all three of them being dead. The applicants are LR's of Prem Singh and Bihara Singh, in that way, the LR's of Jeewan Singh also but the plaintiff did not implead them intentionally just to grab the entire landed property of Jeewan Singh, who was unmarried and issueless. Such contention deserves serious consideration. The plaintiff was required to implead the relatives of Jeewan Singh, who could possibly claim a share in his estate, rather than arraying general public as respondent and not impleading any of such close relatives of Jeewan Singh. Although according to the plaintiff, Jeewan Singh had left home and has not been seen or heard of by persons, who would have ordinarily done so for the last more than seven years, as such, he was presumed to be dead and plaintiff was entitled to get landed property of Jeewan Singh transferred in his name but the applicants being close relatives of Jeewan Singh, they are also in a position to inform as to whether in fact Jeewan Singh was not seen or heard of for last more than seven years. The result of passing of decree in favour of Darbara Singh is that agricultural land of Jeewan Singh stood transferred in his name to the exclusion of other persons, who might have laid a claim therein being LR's of Jeewan Singh. The version of applicants needs to be known and considered and then the dispute can be adjudicated in a proper and appropriate manner. Though Ex-parte judgment - Deceased not heard of for last more than seven years, as such, he was presumed

to be dead and plaintiff was entitled to get property - Only arrayed General Public was required to implead relatives. | 2

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applicants have not been impleaded as defendants by the plaintiff but they can certainly appear in the Court and give their version being members of the general public. Even otherwise, they can be brought on record as defendants being necessary parties.

9. As regards, the judgments i.e. *Sunil Poddar and others v. Union Bank of India* passed by Hon'ble Apex Court in Appeal(Civil) 86 of 2008, *Indira v. Union of India* passed by Kerala High Court in W.P. No.18590 of 1999, *State of M.P. And others v. Kiran Sengar and another* passed by Madhya Pradesh High Court (Gwalior Bench)(DB) in W.P. No.370 of 2002 and *Shankereppa v. Shivarudrappa and others*, ¹ 1963 AIR (Mysore) 115, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

10. I find that the impugned order setting aside the ex-parte judgment and decree, is detailed and well reasoned, which does not suffer from any illegality or infirmity and no interference therewith is called for while exercising jurisdiction under Article 227 of the Constitution of India.

Thus, finding no merit in the civil revision petition, the same stands dismissed.

R.M.S.

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Petition dismissed.

Tags: [\(2022-1\)205 PLR 469](#), [CPC O. 9 R. 13](#), [DARBARA SINGH \(SINCE DECEASED\) THROUGH HIS LRS v. GENERAL PUBLIC](#)