

PLRonline 464587

[Login / Subscribe](#) to read Full Notes and Judgment

(2022-4)208 PLR 753
PUNJAB AND HARYANA HIGH COURT
Before: Mrs. Justice Manjari Nehru Kaul.
GUDDI ALIAS KAMLESH and others – Petitioners,
Versus
KARTAR SINGH and others – Respondents.
CR-2100-2017 (O&M)

Civil Procedure Code, 1908 (V of 1908) Order 9, Rule 13 - Setting aside ex-parte judgment and decree - Death during the pendency of the suit - Son of defendant No.1, moved an application for impleading himself as Legal Representatives - L.Rs. were then summoned directly through munadi - Including the petitioners were duly served through munadi - Respondent in the opinion of this Court, cannot be blamed for the failure of the LR's in their duty to come on record - Interests are fully protected by the other LR's, who are already on record and contesting the case - The relevant consideration would be to see as to whether the estate of the deceased has been effectively represented or not - Application dismissed - Order upheld.

Cases referred to:-

1. (2013-2)170 PLR 688, *Saroj v. Rajender Kumar*.
 2. (2012-2)166 PLR 569, *Shri Chetan v. Shri Narain Singh*.
 3. (2008-1)149 PLR 767 (SC), *Sunil Poddar v. Union Bank of India*.
- Mr. Abhishek Singh*, for the petitioners. *Mr. G.C. Shahpuri*, for respondent No.1.

Manjari Nehru Kaul . J. (Oral) - (13th September, 2022) - The petitioners are impugning the order dated 16.07.2016 (Annexure P-7) passed by the learned Additional Civil Judge Yamuna Nagar at Jagadhri, whereby applications filed by them under Order 9 Rule 13 CPC for setting aside the judgment and decree dated 09.04.2012 (Annexure P-4) and order dated 02.12.2009 (Annexure P-3) vide which they were proceeded against ex parte was dismissed.

2. Learned counsel for petitioner submits that the impugned order deserves to be set aside as it is contrary to the established principles of law. He submits that after the death of defendant No.1-Chuhar Mal during the pendency of the suit, Jai Kishan, son of defendant No.1, moved an application for impleading himself as Legal Representative (hereinafter referred to as 'LR's') of late Chuhar Mal. In reply to the said application, respondent No.1-plaintiff provided a list of other LR's of late Chuhar Mal along with names and addresses. Resultantly, the trial Court thereafter impleaded the LR's as per the list provided by respondent No.1. Learned counsel submits instead of issuing summons through registered

AD, the LR's were then summoned directly through munadi in violation of the provisions of Order 5 Rule 20 CPC. Learned counsel vehemently argued that the trial Court failed to appreciate that respondent No.1 had intentionally furnished incorrect addresses of the LR's and not only this, the name of one of the LR's Balinder Kumar, husband of Sunita, was intentionally mentioned as Virender . He submitted that in the aforementioned circumstances, the trial Court had erred in proceeding ex parte against all the LR's except Jai Kishan vide order dated 02.12.1999, even though no valid service had been effected on them. He submitted that thereafter even Jai Kishan was proceeded against ex parte from which it was discernible that Jai Kishan had colluded with respondent No.1 so as to prevent the other LR's from appearing before the trial Court. Learned counsel argued that since the LR's had not been properly served and no opportunity of hearing had been given to them, hence, it could not be said that the estate of late Chuhan Mal had been properly represented. In support learned counsel places reliance upon the judgment passed by the Division Bench of this Court in the matter of *Saroj v. Rajender Kumar* ¹ (2013-2)170 PLR 688, and judgment passed by this Court in the matter of *Shri Chetan v. Shri Narain Singh*, ² (2012-2)166 PLR 569.

3. *Per contra*, learned counsel for respondent No.1 submitted that the LR's of late Chuhan Mal including the petitioners were duly served through munadi as was evident from the report of the Process Server. He further submitted that even otherwise it was the duty of the LR's to get themselves impleaded and the burden qua the same did not lie on the plaintiff. He argued that the estate of late Chuhan Mal was duly represented by his son Jai Kishan and as per the settled law, once the estate was represented by even one of the LR's, the other LR's need not have been impleaded. Learned counsel while disputing the submissions made by the counsel opposite qua the alleged collusion between Jai Kishan and respondent No.1 submitted that the factum of collusion had not even been pleaded by the petitioners in the application under Order 9 Rule 13 CPC. He further submitted that the respondent-plaintiff could not be blamed in case the LR's did not come on record. He submitted that Sunita wife of Balinder Kumar had received copy of the summons in pursuance to the service through munadi, however, still for reasons best known to her, she failed to appear. He submitted that it was not the case of the petitioners that they had strained relations with Sunita. In support, learned counsel placed reliance upon the judgment passed by the Hon'ble Supreme Court in the matter of *Sunil Poddar and others v. Union Bank of India*, ³ (2008-1)149 PLR 767 (SC); the Division Bench of this Court in the matter of *Sardara Singh and another v. Harbhajan Singh and others; Gurdev Kaur v. Gram Panchayat Balad Kalan and others* and judgment of this Court in the matter of *Jagsir Singh v. Mahasha Dev Raj*.

4. I have heard learned counsel for the parties and perused the relevant material on record.

5. The case of the petitioners in essence is that the respondent-plaintiff had not furnished correct addresses of all the LR's including the petitioners due to which there was

no proper service effected upon them and as a result of which the estate of late Chuhan Mal was not duly represented. Hence, the judgment and decree dated 09.04.2012 deserved to be set aside. It would be relevant to reproduce Order XXII Rule 2 (B) CPC as applicable to the State of Punjab and Haryana.

“The duty to bring on record the legal representatives of the deceased-defendant shall be of the heirs of the deceased and not of the person who is dominus litis.”

6. A reading of the above-reproduced provision leaves no manner of doubt that the duty is cast upon the LRs of the deceased-defendant to bring themselves on record and not on the dominus litis. However, in the instant case, the respondent-plaintiff himself disclosed the particulars of other LRs of late Chuhan Mal, in his reply to the application for bringing on record the LRs moved by Jai Kishan.

7. Even so, when the statutory obligation is on the LRs of the deceased, the respondent-plaintiff could not have been expected to know the correct address of all the LRs. Even if the submissions made by learned counsel for the petitioners are accepted, that the addresses furnished by the respondent-plaintiff were incorrect, this Court cannot lose sight of the fact that one of the LRs i.e. Jai Kishan S/o Chuhan Mal, had put in appearance and was contesting the case. In case the given address was incorrect, Jai Kishan, being one of the LRs, could have furnished the correct address. Moreover, perusal of the impugned order clearly reveals that Sunita W/o Balinder had received copy of summons in pursuance to the service through munadi, however, she still failed to put in appearance and further the petitioners have not even alleged any strained relations with Sunita. Therefore, in totality of the circumstances, the respondent-plaintiff, in the opinion of this Court, cannot be blamed for the failure of the LRs in their duty to come on record.

8. This Court concurs with the submissions made by the learned counsel for the respondents that the estate of late Chuhan Mal was duly represented. Admittedly, one of the LRs of late Chuhan Mal i.e., his son Jai Kishan appeared before the Court and got himself impleaded and further contested the suit on behalf of deceased Chuhan Mal. Hence, the Courts below did not in any manner err in holding that the estate of late Chuhan Mal was effectively represented through Jai Kishan.

9. This Court in the case of *Sardara Singh* (supra) has held that it is not necessary in every case to bring on record all the LRs. Still further, even if all the LRs are all impleaded, there is no requirement of each of them being served, when their interests are fully protected by the other LRs, who are already on record and contesting the case. The relevant consideration would be to see as to whether the estate of the deceased has been effectively represented or not.

10. The case laws relied upon by the learned counsel for the petitioners would not come to their rescue as in the instant case, the petitioners not only failed to come forward and join proceedings but still further the estate of deceased was effectively and duly represented by his LR Jai Kishan.

As a sequel to the above, the instant petition being devoid of merit is dismissed.

R.M.S. – Petition dismissed.