
(2004) 01 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 546 of 2004

Gaurav Uppal and Others

APPELLANT

Vs

Mrs. Sunita Uppal

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4(2)

Citation : AIR 2004 P&H 204 : (2004) 138 PLR 511

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : N.C. Sahni, for the Appellant;

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The petitioners have been impleaded as legal representatives of de-ceased-Krishan Kumar Uppal in a suit for dissolution of firm and for rendition of accounts.

2. Deceased-defendant-Krishan Kumar has filed written statement. The petitioners moved an application after the substitution of the petitioners as legal representatives claiming that they are entitled to file additional written statement in the capacity of legal representatives of the deceased. Said application has been declined by the learned trial Court. The petitioners are aggrieved against the order so passed by the learned trial Court.

3. Learned counsel for the petitioners has contended that in the capacity of the legal representatives, he has the right to file additional written statement in addition to the written statement already filed by the deceased-defendant. Reference was made to Bal Kishan Vs. Om Parkash and Another, .

4. Order 22, Rule 4, Sub-rules (1) and (2) of the CPC read as under:

4. Procedure in case of death of one of several defendants or of sole defendant.--

(1) Where one of two or more defendants dies and the right to sue does not

survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased-defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased-defendant.

5. A perusal of the said Sub-rule (2) authorises any person who is brought on record as a legal representative of defendant to make any defence appropriate to his character as legal representative of the deceased-defendant. The said rule does not permit the legal representative to take a plea which was personal to the deceased. As legal representative, he is entitled to continue with the proceedings so as to represent the interest of the deceased except his personal interest. If the legal representative has independent right, title or interest in the property the said legal representative has to get himself impleaded as the defendant in his own right may be under the provisions of Order 1, Rule 10 of the Code or file an independent civil suit to establish such right. In Bal Kishan's case *supra* ejectment was sought of a tenant on the ground of sub-letting. However, after the death of the tenant, his legal representative raised a plea that he is in possession of the building as a trespasser and the petition for eviction was not maintainable. Such a request was not accepted by the Court. This is how the Court concluded as under :

"In the instant case Bal Kishan, the appellant could not have therefore, in the capacity of the legal representative of the deceased-respondent-Musadi Lal who was admittedly a tenant, raised the plea that he was in possession of the building as a trespasser and the petition for eviction was not maintainable."

6. In *Vidyawati Vs. Man Mohan and others*, it has been held that if a legal representative wants to raise any individual point which the deceased party could not have raised, he must get himself impleaded in his personal capacity or he must challenge the decree in a separate suit. The legal representative is not permitted to file additional written statement. In para No. 3 it was held as under :

3. It is seen that the petitioners' claim of right, title and interest entirely rest on the will said to have been executed by Champawati in favour of the first defendant and herself. It is now admitted across the bar that the first defendant had life interest created under the will executed by Champawati. Therefore, the said interest is conterminous with his demise. Whether the petitioner has independent right, title and interest dehors the claim of the first defendant is a matter to be gone into at a later proceedings. It is true that when the petitioner was impleaded as a party defendant, all rights under Order 22, Rule 4(2) and defences available to the deceased-defendant become available to her. In addition, if the petitioner had any independent right, title or interest in the property then she had to get herself impleaded in the suit as party defendant in which even she could set up her own independent right, title and interest, to

resist the claim made by the plaintiff or challenge the decree that may be passed in the suit. This is the view of the Court below has taken rightly."

7. In the present case, the petitioner has been impleaded as legal representative of the deceased-defendant. The petitioner has not disclosed the nature of defence which is sought to be incorporated to find out whether such additional written statement is appropriate to his character as a legal representative or is an independent right.

8. Thus, there is no material illegality or irregularity in the order passed by the learned trial Court warranting interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

9. Learned counsel for the petitioners further submits that by virtue of impugned order, the right of the petitioners even to seek amendment of the written statement has been taken away. The argument raised by the learned counsel for the petitioners is not tenable. A reading of the order does not show that such a right of the petitioners to seek amendment of the written statement has been declined. Learned trial Court is expected to decide such application in accordance with the law as and when moved.

10. Dismissed with the liberty aforesaid.