
(2017) 04 SHI CK 0052
In the High Court Of Himachal Pradesh
Case No : 128 of 2017

JAI KISHAN AND OTHERS

APPELLANT

Vs

MEHAR CHAND AND OTHERS

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

Citation : (2017) 04 SHI CK 0052

Hon'ble Judges : Sureshwar Thakur

Bench : Single Bench

Advocate : Aman Deep Sharma, Neeraj Gupta

Judgement

1. Heard. Considering the grounds meted in the application qua the applicants thereupon being deterred to move this Court within time for filing an appeal herebefore against the impugned judgements and decree, hence delay, stands satisfactorily explained. Consequently, the apposite delay stands condoned. Application allowed.

Be registered.

CMP (M) No. 2144 of 2016.

2. The learned counsel for the appellants seeks permission to withdraw the instant application. Permission granted. Accordingly, the application stands dismissed as withdrawn. CMP (M) No. 8504 of 2016.

3. In the afore-stated CMP, an unfoldment occurs qua demise of respondent No. 30 Smt. Bhago Devi occurring on 25.12.2012, demise of co-respondent No. 38 Jai Devi occurring on 7.8.2006, demise of co-respondent No. 50 Nardu Devi occurring on 17.10.2007 and the demise of co-respondent No. 51 Smt. Parti Devi occurring on 8.10.2007. Apparently, the demise of co-respondent No. 30 Bhago Devi occurred during the pendency of the apposite civil appeal before the learned Appellate Court, whereas the demise of co-respondent(s) No. 38, 50 and 51 respectively occurred during the pendency of the Civil Suit before the learned

trial Court. However, through the instant application, the applicants strive to constrain this Court for ordering qua the deletion of the name(s) of the aforesaid deceased co-respondents from the apposite array, significantly when their estates stand already sufficiently represented, comprised in their proposed LR's standing already arrayed in the apposite array of co-respondent(s). The aforesaid prayer made by the learned counsel for the applicants remains unopposed by the counsel for the respondents. Cumulatively, the effect of all the evident factum aforesaid, of demise of co-respondent No. 30 Bhago Devi even if occurring before the learned First Appellate Court also the respective demise(s) of co-respondents No. 38, 50 and 51 even if occurring during the pendency of the Civil Suit before the learned trial Court, stirs the counsel for the respondents to espouse qua de hors the factum qua on their respective demise(s) thereat besides theirs not standing ordered to be substituted by their respective LR's, to, yet not work as a constraint upon this Court, to, order for the deletion of their names from the apposite array of respondents, reiteratedly when their respective estates stand sufficiently represented, comprised in their legal representative(s) standing already arrayed in the array of co-respondents, thereafter the learned counsel for the respondents, proceeds to submit with utmost vigour qua the mere occurrence of the names of the aforesaid deceased co-respondents in the apposite memos of parties in the verdicts pronounced respectively by the learned First Appellate Court besides by the learned trial Court also not begetting the ill-sequel qua 'the suit' suffering abatement nor hence any injunction standing fastened upon this Court to decide the question of abatement. Also he contends qua a simplicitor order pronounced by this Court for deleting the name(s) of the aforesaid deceased respondents from the memo of parties held in the aforesaid verdicts pronounced respectively by the learned First Appellate Court and by the learned trial Court also would thereupon constitute an exception qua the normal rule qua whereat the demise of a deceased litigant occurs, qua thereat, an appropriate application for the relevant purpose standing constituted also the Court concerned alone standing bestowed with the jurisdiction to render an order for his substitution or to render an order for his deletion from the apposite array of contestants. The aforesaid submission addressed herebefore by the learned counsel for the respondents, stands considered with utmost circumspection by this Court, yet the solitary factum of occurrence of the name of co-respondent No. 30 Smt. Bhago Devi in the apposite array of co-respondents in the memo of parties of the verdict pronounced by the learned First Appellate Court besides the occurrence of names of deceased co-respondents concerned in the memo of parties of the verdict pronounced by the learned trial Court, de hors the factum of their respective estate(s) standing sufficiently represented, thereupon would ipso facto vitiate the pronouncement(s) made both by the learned First Appellate Court besides by the learned trial Court, whereupon, concomitantly this Court stands constrained to conclude qua the jurisdiction for the ordering qua the deletion of the name of deceased co-respondent No. 30 from the apposite array of co-respondents besides of the names of other deceased co-respondents, names whereof stand unveiled in the memo of parties occurring in the verdicts

respectively pronounced by the courts below, standing solitary bestowed upon the learned First Appellate Court and upon the trial Court, wherefrom this Court concludes qua the application constituted herebefore for the aforesaid purpose warranting its standing dismissed. Significantly, when the judgement(s) rendered by the first Appellate Court and by the learned trial Court respectively constitute the documents of adjudication(s) authored respectively by them, thereupon rendition of any order by the Court qua the name(s) of deceased corespondents being thereupon ordered to be deleted from the respective memo(s) of parties occurring in the respective verdicts of the aforesaid ?Courts? would tantamount to this Court tampering with documents of adjudication authored respectively by the learned First Appellate Court and by the Id. trial Court, whereas the respective adjudicating forums who authored them alone hold the jurisdiction to make apposite alterations therein.

4. Consequently, with the learned First Appellate Court proceeding to pronounce its impugned verdict, with the occurrence in the memo of parties thereof, the name of deceased corespondent No. 30 one Bhago Devi and the learned trial Court also proceeding to likewise pronounce an adjudication despite occurrence in the apposite memo of parties thereof, the names of deceased corespondents concerned, thereupon their respective verdicts visibly stands pronounced against dead persons whereupon they acquire a stain of nullity thereupon the verdicts rendered by the learned First Appellate Court and by the learned trial Court are quashed and setaside. The learned First Appellate Court, is directed to, on an apposite motion standing made therebefore, proceed to strike/delete the name of deceased co-respondent No. 30 from the apposite memo of parties whereafter it shall proceed to remand the matter to the learned trial Court, for facilitating the latter Court, to beget apposite rectifications in its judgement, it, standing afflicted with an inherent legal malady qua its standing pronounced upon respectively deceased co-respondent No. 38, 50 and 51, all of whose demise(s) occurred during the pendency of the Civil Suit therebefore, rectification whereof would stand comprised, in its, on an apposite motion promptly made therebefore hence order for deletion of the names of the aforesaid deceased co-respondents from the apposite array of co-respondents, whereafter the learned trial Court shall record a fresh pronouncement upon the Civil Suit. The pronouncement recorded upon the suit by the learned trial Court after its receiving, it, on remand from the learned First Appellate Court, shall stand recorded thereon within three months since its receiving the file of the Civil Suit from the learned first Appellate Court. Moreover, the learned First Appellate Court is directed to upon the Civil Appeal instituted therebefore by the aggrieved, make an adjudication thereon within two months thereafter.

5. The parties are directed to appear before the learned First Appellate Court on 28.5.2017 whereat the counsel for the defendants is directed to on the date aforesaid, file an application before the learned First Appellate Court, for deletion of the name of Bhago Devi from the array of co-respondents whereafter the learned First Appellate Court shall pronounce an order within one month and

remand it to the learned trial Court. The application is disposed of accordingly. RSA also accordingly allowed and disposed of.