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**(2015) 03 SHI CK 0019**

**In the High Court Of Himachal Pradesh**

**Case No :** R.S.A. No. 578 of 2012 and CMP(M) Nos. 339 and 340 of 2014

Jaswant Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

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**Date of Decision :** 12-03-2015

**Acts Referred:**

**Citation :** (2015) 2 ShimLC 674

**Hon'ble Judges :** Dharam Chand Chaudhary, J.

**Bench :** Single Bench

**Advocate :** Rahul Mahajan, for the Appellant; Pushpinder Jaswal, Dy. A.G.,  
Advocates for the Respondent

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## **Judgement**

Dharam Chand Chaudhary, J.—Challenge herein is to the judgment and decree dated 24.3.2012 passed by learned District Judge, Kangra at Dharamshala, in Civil Appeal No. 138-I/XIII-2010, whereby in modification of the judgment and decree passed by learned Civil Judge (Junior Division), Indora, District Kangra in Civil Suit No. 277/02/2004, the appeal has been partly allowed.

2. Be it stated that the appeal is not yet admitted and is at the stage of consideration of applications {CMP(M) Nos. 339 and 340 of 2014} filed for substitution of legal representatives of Smt. Praveen Kumari, aforesaid on condonation of delay. It is pertinent to mention here that the appellant failed to place on record the death certificate of respondent No. 4 despite several opportunities granted in this behalf. Therefore, the orders which reads as follows came to be passed on the previous date:--

"CMPs (M) No. 339 and 340 of 2014

Again there is no compliance to the orders passed in these applications on 16th September, 2014, 16th October, 2014 and on the previous date i.e. 25th November, 2014.

On the request of learned counsel though one more opportunity is granted,

however, as a last and final. In the event of the steps not taken within three weeks, these applications will stand dismissed automatically and what would be the impact of dismissal of these applications, will also be considered and an appropriate order passed in the main appeal on the next date.

List on 12th March, 2015."

3. The death certificate has, however, not been filed even today also and learned counsel representing the appellant rather pleaded no instructions. Therefore, both the applications {CMP (M) Nos. 339 and 340 of 2014} stand dismissed automatically.

4. The date of death of deceased respondent No. 4 Praveen Kumari in both the applications {CMP (M) Nos. 339 and 340 of 2014} find mentioned as 22.9.2008. Though the death certificate has not been placed on record despite time granted, however, there is no quarrel so as to she died during the pendency of the suit in the trial Court. The factum of her death was not brought to the notice of the Court below by either party. The deceased was arrayed as defendant No. 3 (b). The factum of her death went unnoticed because neither the plaintiff, appellant herein, had taken consequential steps on her death nor the surviving defendants brought the factum of her death to the notice of learned trial Judge. The suit though has been dismissed, however, without substitution of her legal representatives. In the lower appellate Court she came to be arrayed as respondent No. 3 (b). The lower appellate Court has partly allowed the appeal and decreed the suit for the relief of permanent prohibitory injunction against the defendants including deceased defendant-respondent Smt. Praveen Kumari.

5. Whether the suit on the death of respondent Praveen Kumari stands abated for want of consequential steps by the appellant/plaintiff or her legal representatives or not, is a question to be gone into and determined by learned trial Court. No doubt, applications supported by the affidavit of appellant-plaintiff Jaswant Singh have been filed along with this appeal, however, the death certificate of deceased respondent Praveen Kumari has not been annexed therewith. Such material, however, cannot be looked into by this Court. The appellant/plaintiff rather is required to bring the same on the record of learned trial Court and to seek substitution of legal representatives of deceased respondent Praveen Kumari in the said Court.

6. A Co-ordinate Bench of this Court in Jagan Nath and Others Vs. Smt. Ishwari Devi, , has held that the question of substitution of legal representatives of a deceased party and the abatement of the suit/appeal for want of consequential steps has to be decided by that very Court where at the time of death of such party the lis was pending. Consequently, the judgment under challenge was set aside and the case remanded to the lower appellate Court for deciding the questions of substitution of legal representatives of the deceased party and abatement of the appeal, if any.

7. A Co-ordinate Bench of this Court, in Karam Chand and Others Vs. Bakshi

Ram and Others, has again held as under:

"4. In the given circumstances of the case, one or the questions which arises for determination is as to the effect of death of Pohlo Ram and not bring on record his legal representatives in the appeal before the lower appellate Court or in other words, the questions now involved in the matter are as follows:

(i) Whether the appeal before the lower appellate Court had abated, if so the effect and extent of the abatement;

(ii) Whether the abatement should be set aside or not; and

(iii) Whether the legal representatives of the deceased may be allowed to be brought on record or not?

5. It is well settled that as and when the questions, as aforesaid, arise in relation to a suit or appeal, at the first instance, these are to be decided by the Court in which the suit or appeal was pending at the time of the death of the party and abatement, if any, took place."

8. The apex Court in *Kishun @ Ram Kishun (Dead) through LRs. Vs. Bihari (D) by LRs.*, has also held that a judgment either against or in favour of a dead person, is nullity.

9. In view of the legal as well as factual position discussed hereinabove, this Court is not left with any other and further option except to allow this appeal and set aside the impugned judgment and decree and remand the case to learned trial Court for deciding the question of substitution of legal representatives of deceased respondent Praveen Kumari and also that on her death the suit stands abated or not and thereafter to dispose of the suit afresh on merits after deciding the questions of abatement of suit and substitution of the legal representatives of deceased respondent Praveen Kumari.

10. For all the reasons hereinabove, the impugned judgment and decree is set aside and the case is remanded to the learned trial Court with a direction to allow the appellant-plaintiff herein to take consequential steps as he deems appropriate and decide the question of substitution of legal representatives of the deceased respondent Praveen Kumari and also the question of abatement of the suit, if any, after affording due opportunity of being heard to the parties.

11. The parties through learned counsel representing them are directed to appear before learned trial Court on 30th March, 2015. The trial Court to dispose of the suit expeditiously, however, not later than 30th September, 2015. Pending application(s), if any shall also stand disposed of.

12. An authenticated copy of this judgment to learned trial Court {Civil Judge (Junior Division) Indora, District Kangra} and also to learned lower appellate Court, for compliance and being taken on record.