

(2019) 04 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 66 Of 2006, a/w CO No. 18/08

Kishori Lal & Another

APPELLANT

Vs

Money Ram And Others

RESPONDENT

Date of Decision : 11-04-2019

Acts Referred:

Citation : (2019) 04 SHI CK 0010

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Divay Raj Singh, Ajay Kumar, Dheeraj K Vashisht, Anup Rattan

Final Decision : Disposed Off

Judgement

Sureshwar Thakur, J

1. In the plaintiff's suit, for, rendition of a decree for declaration, the learned trial Judge, rendered a verdict of dismissal. The aggrieved therefrom, namely one Balwant, plaintiff, and, one Watna, the contesting defendant therein, preferred two separate Civil appeals respectively bearing Numbers 125/98 RBT 19/04/98, and, 138/98 RBT 18/04/98, before the learned first Appellate Court, and, upon the afore Civil Appeals, the learned first Appellate Court allowed the appeal preferred by the plaintiff Balwant, and, dismissed the cross- appeal preferred therebefore by one Watna.

2. The afore Watna is arrayed in Civil Appeal No. 125/98 RBT 19/04/98, in the array of respondents, and, in Civil Appeal No. 138/98 RBT 18/04/98, as an appellant. The instant appeal, is, instituted by his LRs, without there being, prior thereto, any order being recorded, by the learned first Appellate Court, for, the afore deceased being substituted by his LRs, especially when his demise occurred during the pendency, of, the afore Civil Appeals, and, the relevant application was preferable therebefore. Consequently, without any application for the relevant purpose being moved before the learned first Appellate Court, wherebefore the demise of the afore occurred, and, without an order being

pronounced thereon, the, preferment of instant appeal by his LRs, is grossly mis-constituted, and, is required to be allowed, given, the impugned verdict being nonest it, standing rendered against an unsubstituted deceased litigant. For facilitating representation of, the, estate of the deceased Watna by his LRs, the matter is remanded to the learned First Appellate Court. The learned first Appellate Court is directed, to, upon an application being moved therebefore, for the afore purpose, pass an appropriate order thereon, in accordance with law, and, thereafter also record a fresh decision on the afore Civil appeals.

In view of the above, the present appeal is disposed of, alongwith cross-objection, and, with all pending applications.