
(2005) 01 P&H CK 0063
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 4621 of 2004

M.M. Katyal

APPELLANT

Vs

Subhash Chand and Another

RESPONDENT

Date of Decision : 18-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4(1), Order 22 Rule 4(2)
Registration Act, 1908 — Section 77(1)

Citation : AIR 2005 P&H 203 : (2005) 140 PLR 268 : (2005) 2 RCR(Civil) 101

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Advocate : Vikram Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—In this revision petition the challenge is to the order dated 8,9.2004 passed by the trial court whereby an application moved by the petitioner for permission to file additional written statement has been declined.

2. The respondents-plaintiffs filed a suit u/s 77(1) of the Registration Act, 1908 against Bhagwan Dass for passing a decree directing the defendant to execute and register the sale deed dated 31.5.1994 in their favour. Defendant-Bhagwan Pass filed written, statement and subsequently expired. The trial court by order dated 16.7.2003 impleaded the legal representatives of deceased-Bhagwan Dass. An application was filed by the petitioner, who is the legal representative of deceased Bhagwan Dass, seeking permission of the Court to file additional written statement under Order 22, Rule 4(2) of the CPC (for short "the Code"). The petitioner had sought permission to file additional written statement in order to take the following objections:-

"The alleged sale deed is unconsciousable document. The submission further requires to be supported because not only it appear from the first sight of the sale deed visually that not only the signature have been forced but new carbon

has been used that raises a valid suspicion that the sale deed was not written in hand whereas on other pages the date is typed one. As such, there has been no execution in legal sense of the sale deed. Hence all these points which were available to the deceased defendant may be allowed to be raised now so as to arrive at a just decision of the case. Again it will not be out of merit to state that the vendee-plaintiff has been shown in the Jamabandi as owner which also contravenes the legal position because there has been no valid sale deed by way of registration. As such, the position as it stood on the date of alleged sale deed may also be restored."

3. This application had been opposed by the plaintiffs-respondents. The trial court rejected the application.

4. Learned counsel for the petitioner contended that in view of decisions of the Supreme Court in *Bal Kishan Vs. Om Parkash and Another*, and *Vidyawati Vs. Man Mohan and others*, , the trial court had erred in rejecting the application of the petitioner for permission to file additional written statement. According to the learned counsel the plea now sought to be raised by way of additional written statement is the defence which is appropriate to his character as legal representative of the deceased defendant and the same ought to have been allowed to be raised, by the trial Court.

5. I have heard learned counsel for the petitioner and considered the submission made by him. The Sub-rules (1) and (2) of Rule 4 of Order 22 of the Code 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."

6. The Apex Court in *Bal Kishan's* case (*supra*), while interpreting the scope of Sub-rule (2) of Rule 4 of Order 22 of the Code had laid down as under:-

"Sub-rule (2) of Rule 4. Order XXII, authorises any person who is brought on record as the legal representative of a defendant to make any defence appropriate to his character as legal representative of the deceased defendant, The said sub-rule authorises the legal representative of a deceased defendant or respondent to file an additional written statement or statement of objections raising all pleas which the deceased tenant (defendant) had or could have raised except those which were personal to the deceased defendant or respondent."

7. The Apex Court re-iterated the above legal position in *Vidyawati's* case (*supra*).

8. In the present case, the perusal of para 2 of the petitioner's application seeking permission to file additional written statement, as reproduced above, shows that the pleas which the petitioner seeks to incorporate by way of additional written statement are not those which are appropriate to his character as a legal representative of deceased defendant. The pleas which he wants to incorporate are the one, which were personal and were available to the original defendant i.e. Bhagwan Dass deceased. Thus, the same cannot be allowed to be raised by the petitioner by way of additional written statement under Order 22 Rule 4(2) of the Code.

9. The above being the legal position, the order of the trial Court is perfectly legal and justified. There is thus no merit in the revision petition and the same is dismissed in limine.