
(1986) 07 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 434 of 1986

Punjab State

APPELLANT

Vs

Tarsem Singh

RESPONDENT

Date of Decision : 17-07-1986

Acts Referred:

Citation : (1986) 2 CurLJ 563 : (1986) ILR (P&H) 355 : (1986) PLJ 509 : (1986) RRR 190

Hon'ble Judges : J.V.Gupta.J., J

Advocate : Mr. Rajinder Kumar, Advocate for A.G. Punjab., Advocates for appearing Parties

Judgement

J.V. Gupta, J.

1. The plaintiffrespondent Tarsem Singh and others filed a suit for declaration to the effect that they were ownersinpossession of the suit land, etc. The trial Court decreed the said suit on 2nd November, 1982. One of the plaintiffs namely Udham Singh, son of Lehn Singh died on 20th December, 1982, i.e., after the decision of the trial Court. An appeal was filed by the defendantsState of Punjab on 3rd January, 1983, whereby the said Udham Singh, deceased, was made a party as such. During the pendency of the appeal, factum of the death of Udham Singh was brought to the notice of the defendantState on 22nd February, 1983. However, since no death certificate was filed by the plaintiffs, necessary application for making the legal representatives of the deceased as parties to the appeal could not be filed. The death certificate was filed on 18th July, 1984.

2. There is an application dated 5th May, 1984, which was filed on behalf of the defendantState purporting to be under Order 16, R.10/Order, R. 17, read with Section 151, for amendment of the Written Statement. However, there was no such plea for adding the legal representatives of the deceasedplaintiff as respondent to the appeal. The plaintiffrespondents moved an application dated 8th May, 1984, that since the appeal had been filed against the dead person the same was incompetent and liable to be dismissed. As observed earlier, since the

death certificate was not filed till then, no specific orders could be passed. By virtue of the order under appeal, the learned Additional District Judge dismissed the appeal as not maintainable because it could not proceed in the absence of the legal representatives of the deceased plaintiff Udham Singh.

3. The learned counsel for the State appellant submitted that after the amendment of Order 22 R.4, C.P.C., the question of abatement did not arise, and it was the duty of the respondents to bring the legal representatives of the deceased plaintiffs on record.

4. I have heard the learned counsel for the parties and also gone through the relevant record. Admittedly, the plaintiff respondent Udham Singh died after the decision of the trial Court, and before the filing of appeal. Thus, it was not a case of abatement under Order 22, Rule 4, C.P.C., as contended by the learned counsel for the State. It is a case which is covered by Order 41, R. 20, C.P.C. Subrule (2) of R. 20, Order 41, provides that no respondent shall be added under this provision after the expiry of the period of limitation for appeal unless the Court, for reasons to be recorded, allows that to be done on such terms as to costs as it thinks fit. Subrule (2) was added by virtue of the Amending Act, 1976. The proper course for the State was to move an application under the said Rule and to claim condonation of delay on the facts and circumstances of the case. Even the learned Additional District Judge took the same view as per para 15 of its judgment.

5. Ordinarily, the case would have been sent back to the Additional District Judge directing the State to move the necessary application in this behalf but taking into consideration the facts and circumstances of the case, and the fact that the other brothers of the deceased were already there as respondents, no prejudice could be said to have been caused to them as their interest was common with the deceased. Under the circumstances, the legal representatives of the deceased Udham Singh are allowed to be brought on record on payment of Rs. 300/ as costs. The necessary application for bringing the legal representatives on record be filed within 30 days from the date of appearance in the Court of Additional District Judge, Hoshiarpur, on 18th August, 1986. The appeal shall then be decided on merits in accordance with law.