
(2019) 10 SHI CK 0065
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 554 Of 2018

Rasila Ram And Others

APPELLANT

Vs

Tara Chand

RESPONDENT

Date of Decision : 25-10-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 1 Rule 10
Constitution Of India, 1950 — Article 227

Citation : (2019) 10 SHI CK 0065

Hon'ble Judges : jay Mohan Goel, J

Bench : Single Bench

Advocate : Ramakant Sharma, Basant Pal Thakur

Judgement

Ajay Mohan Goel, J

1. By way of this petition filed under Article 227 of the Constitution of India, petitioners herein have assailed the order passed by the Court of learned Civil Judge (Sr. Divn.), Nadaun, District Hamirpur, in CMA No. 58/2018, filed in Civil Suit No. 58/2006, titled as Tara Chand vs. Rasila Ram and others, vide which, learned Trial Court allowed the application filed under Order 1, Rule 10 of the Code of Civil Procedure for deleting the name of defendant No. 2 therein and substituting the said deceased-defendant with his legal representatives.

2. Contention of learned Counsel for the petitioner is that the order, which has been passed by the learned Court below, is not sustainable in the eyes of law because as defendant No. 2 before the learned Trial Court had died before passing of the preliminary decree by the learned Trial Court which was so passed on 31.05.2012, the decree so passed is a nullity and it could not be rectified by way of substituting the legal representatives of deceased-respondent No. 2.

3. On the other hand, learned Senior Counsel appearing for the respondent has argued that there was no infirmity with the order passed by learned Trial Court nor it could be said that the preliminary decree passed by the learned Trial Court

was a nullity, because in the suit, which was filed for partition, plaintiff was only claiming his undisputed share out of the joint suit property.

4. I have heard learned Counsel for the parties and gone through the preliminary decree passed by the learned Trial Court (Annexure P-1) as also impugned order (Annexure P-6).

5. It is not in dispute that defendant No. 2 Shri Paras Ram died on 01.12.2006. It is also not in dispute that the preliminary decree, which was passed by the learned Trial Court in a suit which was filed by the present respondent for possession by way of partition and in the alternative for mandatory injunction, was passed by the learned Trial Court on 31.05.2012.

6. Hon'ble Supreme Court in Gurnam Singh (Dead) through Legal Representatives and others versus Gurbachan Kaur (Dead) by Legal Representatives, (2017) 13 Supreme Court Cases 414, has held that judgment/order passed, either in favour of or against a dead person, is a nullity. In my considered view, as the law laid down by the Hon'ble Supreme Court is that a decree which is passed, either in favour of or against a dead person, is a nullity, no distinction can be made on the ground that the decree so passed is a preliminary decree or a final decree. Therefore, it will be in the interest of justice, in case preliminary decree so passed by the learned Trial Court as also the order passed by it, on the application filed under Order 1, Rule 10 of the Code of Civil Procedure by the present respondent to bring on record legal representatives of deceased-defendant No. 2 before the learned Trial Court, are set aside, however, with a further direction that the application so filed by the respondent herein be again adjudicated afresh by the learned Trial Court and after appropriate orders are passed upon the same by the learned Trial Court, then after hearing the parties, a fresh preliminary decree be passed. Ordered accordingly. In other words, this petition is allowed by setting aside not only the order which was passed by the learned Trial Court dated 15.11.2018 (Annexure P-6) on the application filed by the present respondent under Order 1, Rule 10 of the Code of Civil Procedure, but also the preliminary decree passed by the learned Trial Court dated 31.05.2012, is ordered to be set aside on the ground that same stood passed against a dead person. It is further ordered that the application which has been filed under Order 1, Rule 10 of the Code of Civil Procedure by the present respondent, who is plaintiff before the learned Trial Court, shall be adjudicated afresh after issuance of notice to the proposed legal representatives. This Court hopes and expects that keeping in view the controversy involved in the case, necessary orders on the same, shall be passed by the learned Trial Court without harping upon the factum of delay, if any, in filing the application. Further, as the main suit pertains to the year 2006, an endeavour shall be made by the learned Trial Court to at least pass the preliminary decree on or before 31.01.2020.

The petition stands disposed of in above terms, so also pending miscellaneous application(s), if any.