

(2000) 11 P&H CK 0262

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3650 of 1993

Karam Kaur (died)

APPELLANT

Vs

Dalip Singh (dead) through LRs.

RESPONDENT

Date of Decision: Nov. 1, 2000**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 4, Order 22 Rule 9

Citation: (2001) 2 CivCC 9 : (2001) 4 RCR(Civil) 361**Hon'ble Judges:** M.L. Singhal, J**Bench:** Single Bench**Advocate:** G.S. Mann, for the Appellant; Subhash Aggarwal, for the Respondent**Final Decision:** Allowed

Judgement

M.L. Singhal, J.

Heard

2. Smt. Karani Kaur widow of Ajit Singh son of Bishan Singh resident of village Bhinder Kalan, Tehsil Zira through general attorney Mukhtiar Singh son of Malkiat Singh son of Bishan Singh resident of Bhinder Kalan Tehsil Zira filed suit in March 1993 against Dalip Singh and Ranjit Singh sons of Anokh Singh son of Nathu Singh residents of Mandiranwala, Tehsil Moga to the effect that she is owner in possession of land measuring 3 kanals 19 marlas as detailed in the heading of the plaint situated in the area of Moga Me-hla Singh, Tehsil Moga and for permanent injunction restraining them from interfering with her possession of the said land and also from alienating, transferring or disposing of the said land. During the pendency of the suit, an application was moved by the plaintiff for bringing on record the legal representative of deceased Dalip Singh namely Smt. Bhagwan Kaur (wife). This application was resisted by Ranjit Singh saying that this application is not maintainable as Dalip Singh was dead since before the institution of the suit and suit against a dead person is a nullity. It was stated that Dalip Singh had died about two

years prior to the institution of the suit. Vide order dated 14.10.1993, Subordinate Judge Second Class, Moga held that this application is not maintainable since Dalip Singh was dead since before the institution of the suit and the suit against a dead person is a nullity. He posted the case for the written statement of Ranjit Singh defendant to 19.10.93. Not satisfied with this order, Smt. Karam Kaur has come up in revision to this Court.

3. Learned counsel for the petitioner submits that it is true that Dalip Singh was dead since before the date of the institution of the suit but it is equally true that in this case, Dalip Singh was not the sole defendant but Ranjit Singh was also a defendant with him and if Dalip Singh were the sole defendant, the suit filed by Karam Kaur would have been a nullity. It is submitted that this suit could not have been viewed as nullity when Ranjit Singh was a defendant in the suit. So far as the legal representative/heir of Dalip Singh deceased is concerned, the suit shall be deemed to have been instituted against him/her when the application for bringing on record his LR/heir was filed in the trial Court. It is submitted that the judgment reported as [Cuttack Municipality Vs. Shyamsundar Behera](#), where it was held that "suit against dead person is a nullity" is not applicable to the facts of this case as here Dalip Singh and Ranjit Singh sons of Anokh Singh both were defendants in the suit whereas in [Cuttack Municipality Vs. Shyamsundar Behera](#), in S.C.C. suit No. 106 of 1974 filed by Cuttack Municipality Chintamani Behera was the sole defendant and in S.C.C. suit No. 107 of 1974 filed by Cuttack Municipality, Kartik Chandra Mitra was the sole defendant, Chintamani Behera and Kartik Chandra Mitra both were dead long prior to the institution of the suit. It was in these circumstances that the High Court of Orissa took the view that suit against dead person was nullity and prayer of the Municipality for bringing on record the Lrs of the deceased-defendants could not be entertained. A Division Bench of Mysore High Court in C. Mittu v. Bharth Match Works, Sivakasi, AIR 1964 Mys. 293 held that "In a suit filed against a dead person, a Court has no jurisdiction to grant an application under Order 1 Rule 10 or under Order 22 Rules 4 and 9 or do any other act authorised by the Civil Procedure Code, as the suit filed against a dead person is a nullity. Their Lordships clearly laid down that no substitution can be permitted in a case where there was a sole defendant, but where there are more defendants than one and one of them was dead when the suit was filed, the legal representatives of the deceased defendant can be brought on record subject to any question of limitation that may be raised by the legal representatives of the deceased person who were brought on record as the suit had been validly presented in so far as the living defendants are concerned." It is submitted that LR of late Dalip Singh defendant should have been allowed to be brought on record. Qua the LR of Dalip Singh defendant, the suit could be deemed to have been instituted on the day when the plaintiff had made an application for his LR being brought on record.

4. Learned counsel for the respondents, on the other hand, submits that the suit filed by Karam Kaur against Dalip Singh and Ranjit Singh was a nullity as Dalip Singh

was dead since before the institution of the suit and if that was so, the prayer of Karam Kaur for bringing on record the LR of Dalip Singh was rightly declined by the trial court. Suffice it to say, it would bear repetition that Dalip Singh was not the sole defendant. Ranjit Singh was also a defendant in the suit. As against the LR of Dalip Singh, the suit shall be deemed to have been filed, when Karam Kaur had made an application for bringing her on record in place of Dalip Singh as his LR. Learned counsel for the petitioner submits that Karam Kaur was also dead. She died on 26.6.2000 leaving behind her son Balbir Singh. Balbir Singh be brought on record as the LR of Karam Kaur through one Mukhtiar Singh, who is stated to be his general attorney vide registered power of attorney dated 12.7.2000. Balbir Singh was allowed to be substituted in place of Karam Kaur in the memo of parties in this revision.

5. Revision allowed.