

**(2016) 12 P&H CK 0174**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 6778 of 2013(O&M)

Lal Chand

APPELLANT

Vs

Dayanand

RESPONDENT

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**Date of Decision:** Dec. 16, 2016

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 22 Rule 10

**Citation:** (2017) 1 ICC 792 : (2017) 1 LawHerald 147

**Hon'ble Judges:** Mrs. Rekha Mittal, J.

**Bench:** Single Bench

**Advocate:** Mr. R.D. Yadav, Advocate, for the Petitioner; Mr. R.K. Yadav, Advocate, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

**Rekha Mittal, J.** - The present petition directs challenge against order dated 12.8.2013 passed by the Civil Judge (Junior Division). Rewari whereby application of the petitioners for impleading legal representatives of Vijay Pal defendant No. 13 was ordered to be dismissed.

2. Counsel for the petitioners has submitted that the petitioners and proforma respondents filed a suit for declaration that mutation bearing No. 6051 was got sanctioned by Chandgi Ram in excess of his share, therefore, the said mutation and subsequent mutations are not binding on the plaintiffs and mutation qua area measuring 16 kanals 2 marlas be sanctioned in favour of the plaintiffs. The suit was instituted on 19.7.2010 in which Vijay Pal was impleaded as defendant No. 13. On the process issued by the Court for service of Rohit and Vijay Pal sons of Vidha @ Lali, a report dated 19.1.2011 was received that Rohit and Vijay Pal are not residing in the village and they are residing somewhere in Delhi. Later, the petitioners and proforma respondents (plaintiffs) came to know that Vijay Pal has passed away and

the instant application was filed for bringing on record his legal representatives. It is argued with vehemence that in case legal representatives of Vijay Pal are not allowed to be brought on record, it may cause serious prejudice to the petitioners as their claim for seeking sanction of mutation in favour of the plaintiffs qua land measuring 16 kanals 2 marlas may not be allowed without giving an opportunity of hearing to the successors in interest of Vijay Pal. It is further submitted that as the plaintiffs were not aware of death of Vijay Pal at the time of institution of the suit and had it been known to them, there was no reason for them to implead Vijay Pal as a party in place of impleading his legal representatives, the application is liable to be accepted. In support of his contention, he has referred to judgment of Hon"ble the Supreme Court of India <i><ß>Karuppaswamy and others v. C. Ramamurthy AIR 1993 Supreme Court 2324.</ß</i> Further reference has been made to judgment of this Court <i><ß>Joginder Singh v. Chander Kanta through Lr. and others 2006 (4) RCR (Civil) 418.</ß</i>

3. Counsel for the contesting respondents, on the contrary, has supported the impugned order with the submissions that in case application filed by the plaintiffs is allowed, it would amount to de novo trial of the suit, therefore, the respondents would be put to unnecessary harassment and mental agony without any fault attributable to them. Another submission made by counsel is that even if Lrs of deceased Vijay Pal are not brought on record, the plaintiffs may file a separate suit for the relief claimed only against legal representatives of Vijay Pal. For this purpose, he has cited judgment of this Court <i><ß>Nachhattar Singh v. Darshan Singh and others 2010 (4) PLR 764.</ß</i>

4. I have heard counsel for the parties, perused the paper book and the various annexures.

5. There is no denial that the suit for declaration and injunction was filed by the plaintiffs on 19.7.2010 and in the suit, 16 persons including Rohit and Vijay Pal sons of Vidha @ Lali were arrayed as defendants. On the summons issued by the trial court for service of Rohit and Vijay Pal, report dated 19.1.2011 was received that they are not residing in the village Naya Gaon Daulatpur, Tehsil and District Rewari and they are residing somewhere in Delhi. The petitioners have placed on record death certificate of Vijay Pal regarding his death on 29.3.2010 and place of death being village Kanganheri ND (New Delhi). This certificate appears to have been issued by the Sub Registrar (Birth and Death), Nazafgarh Zone (M.C.D.). The report received by the Court on the process issued for service of Vijay Pal coupled with death certificate is sufficient to substantiate plea of the petitioners that the petitioners were not aware of death of Vijay Pal at the time of institution of the suit. There is nothing on record suggestive of the fact that the petitioners despite knowing that Vijay Pal died but still impleaded him as a party with some mala fide intention or an ulterior object to achieve.

6. This Court in Joginder Singh's case (supra) while relying upon judgment of Hon"ble the Supreme Court of India Karuppaswamy and others" case (supra) has held that in view of authoritative pronouncement of Hon"ble the Supreme Court, the impugned order dismissing application filed by the petitioners to bring on record legal representatives of defendant No.1 cannot be sustained and accordingly the revision petition was accepted, impugned order was set aside and legal representatives of defendant No. 1 were permitted to be brought on record and the trial court was directed to proceed with the matter after impleading legal representatives of defendant No. 1. When the facts and circumstances of the present case are examined in the light of ratio laid down in Karuppaswamy and others" case (Supra) relied upon by this Court in Joginder Singh's case (supra), I find no hesitation to hold that the impugned order cannot be allowed to sustain and liable to be set aside.

7. To be fair to the respondents, counsel has referred to judgment of this Court Nachhattar Singh's case (supra). In the said case, the petitioner had challenged an order passed by the trial court whereby application filed by the plaintiffs/respondents under Order 23 Rules 1 and 3 Code of Civil Procedure was allowed and the respondents/plaintiffs were permitted to withdraw the suit with liberty to file a fresh one on the same cause of action as the suit has been filed against a dead person. In the case at hand, the petitioners have not sought permission of the Court to file a fresh suit on the same cause of action after withdrawal of the present one, may be, for the reason that many persons have been impleaded as defendants and out of them only one was dead by the time the suit was instituted in July 2010. If the purpose can be served by impleading legal representatives of one of the defendants, allowing an alternative course of withdrawal of the suit with liberty to file a fresh one on the same cause of action at the cost of wastage of time and energy of all the stake holders including that of the court should be a better option. Under the circumstances, I find myself unable to be persuaded with the submissions made by counsel for the respondents.

8. For the foregoing reasons, the petition is allowed, the impugned order is set aside. The application filed by the plaintiffs for impleading legal representatives of deceased Vijay Pal is allowed and the trial court is directed to proceed with the suit, in accordance with law after bringing on record legal representatives of the deceased and giving them due notice.