

2025:PF-HC:077959



CM-18604-CII-2024 in/and
FAO-1784-2023 (O&M)

[229+115] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-18604-CII-2024 in/and
FAO-1784-2023 (O&M)

Date of Decision : 02.07.2025

Ramesh Chand Goyal and another ...Appellants

versus

Sant Lal and othersRespondents

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Shailendra Jain, Senior Advocate with
Mr. Rahul, Advocate and Mr. Munish Sharma, Advocate
for the appellants.

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Jashandeep Singh Bains, Advocate
Mr. H.S. Rajput, Advocate and
Mr. Gurpreet Singh, Advocate
for respondent Nos.1 to 3 & 11.

PANKAJ JAIN, J. (ORAL)

[1] The appeal is directed against order dated 12.04.2023 whereby the Appellate Court in an application seeking setting aside ex parte judgment and decree dated 24.12.2021 preferred by legal representatives of defendant No.6-Janaki Dass in the original suit ordered that the legal representatives of Janki Dass should establish the status as legal representatives by filing a separate suit.

[2] Plaintiffs-respondents filed a suit seeking declaration to the effect that they have become owners being in possession as occupancy tenants. Janaki Dass was impleaded as defendant No.6. Janaki Dass was



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proceeded against ex parte. Suit was dismissed by the Court of the first instance. In appeal preferred by the plaintiffs, Janaki Dass was not served invoking Order XLI Rule 14 CPC. Suit was finally decreed vide judgment and decree dated 24.12.2021 passed by District Judge, Hisar.

[3] The plaintiff-respondent Nos.1 to 3 being the legal representatives of Janaki Dass filed an application seeking setting aside of the ex parte judgment and decree dated 24.12.2021, claiming that Janaki Dass died on 17.12.1968 and even his son namely Madhu Sudan died on 11.12.1990 and thus, it is a case where the suit was filed against dead person and ex parte decree was obtained without there being proper procedure followed. It is on the said application that the Lower Appellate Court which passed the decree in appeal made the following observations relegating the plaintiffs to file a separate suit to first establish their status as legal heirs of defendant Nos.5 & 6:-

“10. Admittedly, a judgment and decree dated 24.12.2021 has been passed by my learned Predecessor in a suit titled Sant Lal etc. Vs. Ram Dulari etc. after setting aside the judgment and decree of learned trial court. Now no proceedings of any kind is pending before this court. The applicants have filed the present applications claiming themselves to be the legal heirs of defendant no. 5 Banwari Lal and defendant no. 6 Janki Dass, on the basis of some photostat documents. All these documents are photostats and pertaining to different places. The documents relied upon by the applicants Chameli Devi, Sachin, Subhash, Anil and Sunil pertain to one Banarsi Dass and not defendant no. 5 Banwari Lal. On the other hand, the plaintiffs-appellants have also filed some documents in which it appears that till the year 2010, deceased Janki Dass was alive and one Mukesh son of Ram Parkash is the only legal heir of deceased Janki Dass. For setting aside the exparte judgment and decree, the applicants firstly proved themselves to be the legal heirs



of defendants no. 5 and 6 by leading cogent and convincing evidence. I have perused order 22 Rule 5. Order 22 Rule 5 is applicable at appellate stage only when some appeal or other proceedings are pending and the question of determination of legal representatives arises. But in the present case, neither the appeal nor any other proceedings are pending or going on before this Appellate court. It is a matter of evidence whether the applicants are the legal heirs of defendants no. 5 and 6, so without determining the question of legal heirs, a legal judgment and decree cannot be set aside because in the present controversy, it is a disputed fact that the applicants are the legal heirs of defendants no. 5 and 6. The appropriate remedy to the applicants is to approach the Civil Court for declaring the impugned judgment and decree as null and void if same has been passed against dead persons, by filing a civil suit after proving themselves to be the legal heirs of defendants no. 5 and 6, instead of filing the present application before this court. The case law relied upon by learned counsel for the applicants are distinguishable in the facts and circumstances of the present case.

11. As a result of foregoing discussion, finding no merit in the present applications, the same are hereby dismissed with no order as to costs. File of these applications be tagged with the main appeal file of case titled as Sant Lal etc. Vs. Ram Dulari etc. and be consigned to record room after due compliance. ”

[4] In the considered opinion of this Court, the impugned order cannot be sustained in view of the procedure laid down in Order XXII Rule 4 CPC as applicable to Punjab, Haryana and Chandigarh by way of High Court Amendment inserted by Punjab Government Gazette dated 25.03.1925, which reads as under:-

“77) Order XXII. Rule 4:-

(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.

(3) Where within the time limited by law no application is made under sub-rule (1) the suit shall not abate as against the deceased-defendant and judgment be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

(4) If a decree has been passed against a deceased-defendant a person claiming to be his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware of the suit or that he had not intentionally failed to make an application to bring himself on the record, the Court shall set aside the decree upon such terms as to costs or otherwise as it think fit.

(5) Before setting aside the decree under sub-rule (4) the Court must be satisfied prima facie that had the legal representative been on the record a different result might have been reached in the suit.

(6) The provisions of section 5 of the Indian Limitation Act 36 of 1963 shall apply to application under sub-rule (4)".

[5] In view of Order XXII Rule 4(4) where a decree has been passed against a deceased-defendant, his legal representative may apply for setting aside the decree passed. In terms of Order XXII Rule 4(5), the Court has to determine as to who was the legal representatives when a party to the suit dies.

[6] The issue w.r.t. decision by the Court regarding rival claims of



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the parties claiming themselves to be legal representative of the deceased is no more *re integra*. Interpreting Order XXII Rule 5 CPC, Supreme Court in the case of **Jaladi Suguna (Dead) through L.R. vs. Satya Sai Central Trust and others, (2008) 8 SCC 521** held as under:

“11. The provisions of Rules 4 and 5 of Order 22 are mandatory. When a respondent in an appeal dies, the Court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representatives, as parties to the appeal without deciding who will represent the estate of the deceased, and proceed to hear the appeal on merits. The court cannot also postpone the decision as to who is the legal representative of the deceased respondent, for being decided along with the appeal on merits. The Code clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the court. The Code also provides that where one of the respondents dies and the right to sue does not survive against the surviving respondents, the court shall, on an application made in that behalf, cause the legal representatives of the deceased respondent to be made parties, and then proceed with the case. Though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of the appeal on merits, Rule 4 read with Rule 11 make it clear that the appeal can be heard only after the legal representatives are brought on record.”

[7] The aforesaid dictum has been further followed by Apex Court in the case of **Mahanth Satyanand @ Ramjee Singh vs. Shyam Lal Chaudhan and others, (2018) 18 SCC 485** holding as under :



“11. It is indisputable that the procedural laws are meant to advance justice. A procedure contemplated under the code which is mandatory in nature shall not be skipped or ignored by the Courts. Whereas, in the instant case, the High Court’s approach has diluted the purport of Order 22 Rule 5 of the CPC and is contrary to the law laid down by this Court in *Jaladi Suguna* (supra). Such an approach of the High Court cannot be sustained.

12. Although we are apprised of the fact that alleged legal representatives relying on certain customs to prove whether a Grihastya could be a Guru under the relevant sampradaya. We need not concern our self with the aforesaid findings on merit given by the trial court at this stage. It is for the High Court to consider the aforesaid report of the trial Court and determine the disputed question of fact. It may not be out of context to note that the determination under Order XXII Rule 5 of CPC is summary in nature and for limited purpose. Order passed on the impleadment applications, determining a particular person as legal representative has no effect of final decision or operates as res-judicata between the legal representatives as to the question of who should ascend as Guru. At the cost of repetition, we may note that the determination by the High Court would be limited to the question, as to who should be brought on record in the place of deceased for the purposes of continuing the suit alone, and nothing beyond that.”

[8] The respondents-plaintiffs have contested the status of the petitioners as LRs of Janaki Dass claiming that the Death Certificates relied upon are merely photocopies.

[9] Be that as it may, instead of relegating the plaintiffs for filing a separate suit, the Court that passed the decree was to satisfy itself with respect to the plaintiffs-applicants being the LRs of the deceased and pass

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order.

[10] Accordingly, the impugned order is hereby *set aside*. The matter is remanded back to the District Judge, Hisar to decide the application filed by the plaintiffs for setting aside of the ex parte decree against dead person as claimed afresh in accordance with law after adjudicating upon the status of applicants claiming themselves to be LRs of deceased-defendant/Janaki Dass. The parties shall appear before District Judge, Hisar on 11.08.2025.

[11] This Court is quite *sanguine* that keeping in view that the matter is pending for long, the District Judge shall make endeavour to adjudicate the application within a period of 09 months from the date of receipt of certified copy of this order.

[12] **Disposed off.** All pending miscellaneous application(s), if any, stands *disposed off*.

(PANKAJ JAIN)
JUDGE

02.07.2025

'R. Sharma'

Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No