

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
CMPMO No.387 of 2023
Decided on 25th November 2025

Amar Singh

...Petitioner

Versus

Sh. Ramesh Chand and others

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting? Yes.

For the petitioner:

Mr. Rahul Mahajan, Advocate.

For the respondents :

**Mr. Vivek Thakur, Advocate, vice
Mr. Sanjeev Sood, Advocate, for
respondents No.1, 2(a) to 2(d) and
3.**

**Mr. Rahul Gathania, Advocate, for
respondents No.4, 5, 7, 9 and 10.**

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioner has prayed for
the following reliefs:-

- a) *"That the order dated 31.05.2023 passed in Civil Misc. Appeal (RBT No.07G/XIV/2023/2019)/ (Registration No.30/2019) titled as Amar Singh vs. Ramesh Chand and others by the learned Additional District Judge Dehra, District Kangra, H.P. (Annexure P-5) whereby the learned Additional District Judge Dehra, District Kangra, H.P., has upheld the order dated 17.12.2018 passed in Civil Case No.170 of 2012 by the learned Senior Civil Judge, Dehra, District Kangra, H.P., be quashed and set aside.*

b) Allow the application filed under Order 22 Rules 4 and 9 read with Section 151 of the CPC and Section 5 of the Limitation Act for bringing on record the legal representatives of deceased respondent No.2 in totality.”

2. The petitioner is aggrieved by the order passed by the learned Trial Court as well as the learned Appellate Court, in terms whereof, the application filed by the petitioner/plaintiff under Order 22 Rule 4 of the Civil Procedure Code to bring on record the legal representatives of deceased defendant No.2 has been dismissed.

3. Learned counsel for the petitioner argued that the impugned orders under challenge are not sustainable in the eyes of law as the learned Courts below have erred in not appreciating that immediately when the factum of the death was brought to the notice of the plaintiff, the steps to bring on record the legal representatives were taken forthwith. Learned counsel referred to the original record which is available and submitted that the prayer was made on behalf of the petitioner on 20.11.2017 for the grant of opportunity to file an application to bring on record the legal representatives of deceased

defendant No.2, when the factum of the death of said defendant was disclosed to the plaintiff and immediately thereafter, the application was filed on 11.12.2017. In these circumstances, he stated that the rejection of the application as well as dismissal of appeal is not sustainable in the eyes of law. With regard to the order passed by the Court dated 04.05.2016, he stated that the order as is recorded was passed at the back of the plaintiff which is evident from the fact that the order which was passed on 04.05.2016 was to the effect that the report of Local Commissioner received and be put up for filing of objections thereto on 03.08.2016. Subsequently there is another order, in which, it stands recorded that at this stage, learned counsel for defendants No.1 to 3 informs that defendant No.2 is dead,. He argued that even if it is to assumed that this information was given on the said date to the Court, it was at the back of the plaintiff as the presence of the learned counsel for the plaintiff is not recorded in this order. He submitted that in these circumstances as the impugned orders was extremely harsh, they are liable to be quashed and set aside. Learned counsel for the petitioner also argued on the

basis of the record that otherwise also the mode and manner in which the subsequent order stands recorded on 04.05.2016 raises eye brows for the reason that all other orders are in continuity, whereas, this particular order is in isolation on one page.

4. On the other hand, learned for the respondents defended the order passed by the learned Trial Court as well as the learned Appellate Court. Learned counsel took the Court through the record as well as the impugned order and submitted that as the factum of the death of defendant No.2 was on record of the Court file as on 04.05.2016, the plaintiff was bound to have had taken steps within 90 days as from 04.05.2016. He stated that the contention of the learned counsel for the petitioner that the death of defendant No.2 was disclosed only on 20.11.2017 was incorrect, because, order dated 20.11.2017 did not record so. It only records that the plaintiff prayed for and was granted time to bring on record the legal representatives of defendant No.2. Accordingly, he submitted that as there was a great delay in filing the application, which was not duly explained, the learned Courts

below rightly rejected the applications.

5. I have heard learned counsel for the parties and have also carefully gone through the order passed by the learned Trial Court as well as learned Appellate Court and the record of the case.

6. It is a matter of record that when the case was listed on 04.05.2016 two orders have been recorded. The first order reads as under:-

"04.05.2016

*Present: Sh. H.K.S. Dogra, Advocate, for the plaintiff.
Sh. N.K. Sharma, Advocate, for defendants No.1 to 3.
Sh. Lalit Uppal, Advocate, for defendants No.4 to 11.*

Report of Local Commissioner already received. Be put up for filing objections, if any, to L.C. report and for consideration on 03.08.2016.

*(Arvind Sharma)
Civil Judge(Sr. Div.)-cum-JMIC-1
Dehra, District Kangra, H.P.*

Thereafter, on the back side of the order sheet another order of the same date is recorded, which reads as under:-

*"At this stage learned counsel for defendants No.1 to 3
Sh. N.K. Sharma, stated that defendant No.2 Sh. Ram Krishan*

has expired on 07.02.2016. Let file be listed for taking steps and objection to L.C. report on the date fixed.

*Sd/-
Civil Judge(Sr. Div.)-cum-JMIC-1
Dehra, District Kangra, H.P.*

7. Now incidentally, as far as the first order is concerned it was recorded in the presence of one Sh. H.K.S. Dogra, learned counsel for the plaintiff, whereas, when the subsequent order was recorded it does not find mentioned therein that the learned counsel for the plaintiff was present before the Court. Not only this, in terms of the earlier order that was passed on 04.05.2016, the case was ordered to be listed on 03.08.2016, but the next date which finds mentioned in the order sheet is 27.10.2016 and the record does not demonstrate as to why the case was not listed on 03.08.2016 or any date subsequent thereto.

8. Be that as it may, a perusal of the order-sheets passed by the Court demonstrates that after 04.05.2016 upto 20.11.2017 at no stage there was any objection taken on behalf of the defendants that as defendant No.2 was dead and as there was no application filed to bring on record the legal representatives of defendant No.2, therefore, the proceedings

stood abated qua defendant No.2. It is only on 20.11.2017 that on the request of the learned counsel for the plaintiff time was granted to bring on record the legal representatives of defendant No.2.

9. This order which is passed on 20.11.2017 reads as under:-

“At this learned counsel for the plaintiff stated that defendant No.2 has expired and prayed time for filing appropriate application in this regard. Be listed for filing of application on 11.12.2017.”

10. The manner in which this order has been written gives some credence to the contention of the learned counsel for the petitioner that on the said date it was disclosed in the Court that defendant No.2 was dead and accordingly a prayer was made by the plaintiff for grant of time to file an appropriate application, which was allowed.

11. In these peculiar circumstances if one goes through the order passed by the learned Trial Court as well the Appellate Court one finds both the orders to be harsh. It is settled law that procedure is the handmaid of justice. Procedure is not to throttle the cause of justice but, to achieve the same.

This extremely important aspect of the matter has been ignored both by the learned Trial Court as well as learned Appellate Court while passing the impugned orders. They have erred in not appreciating that had the application been allowed by condoning the delay and setting aside the abatement by imposing the reasonable costs, heavens were not going to fall. However, a result of the non-indulgence shown by the learned Courts has resulted in the lingering of, of this matter since 2017 on this issue only and today we are in the end of the year 2025.

12. As in the light of the findings returned by the learned Trial Court as well as the learned Appellate Court, this Court is satisfied that the rejection of the application filed by the petitioner to bring on record the legal representatives of defendant No.2 was not justified, accordingly, this petition is allowed. The order passed by the learned Trial Court dated 17.12.2018 is quashed and set aside so is the fate of the Appellate order dated 31.05.2023. Learned Trial Court is directed to bring on record all the legal representatives of deceased defendant No.2 by condoning the delay and setting aside abatement as the proposed legal representatives already

stand representatives before this Court. They shall put in appearance before the learned Trial Court as defendants in the Civil Suit. This will be subject to the payment of cost of Rs.30,000/- by the petitioner to the defendants i.e., Rs.3,000/- to each of the original defendants/their LR. It goes without saying that in case the cost is paid by the petitioner to the defendants/their legal representatives on the next date of hearing, then, the learned Trial Court shall proceed in accordance with the order passed by this Court, otherwise this order will loose its efficacy. Parties through counsel to appear before the learned Trial Court on 22.12.2025. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

November 25, 2025
(*Vinod*)