

owned and possessed by him and not his father Ram Dia. The learned Chief Judicial Magistrate found that Ram Dia was the owner of the property and thus ordered the auction of the property attached. In appeal, the learned District Judge maintained the said order.

(3) Learned counsel for the petitioner submitted that the procedure adopted by the Chief Judicial Magistrate was not warranted under Section 421 of Criminal Procedure Code. According to the learned counsel, thereunder attachment and sale of any movable property belonging to the offender could be ordered but not of any immovable property. For attachment of the immovable property, the Court will issue a warrant to the Collector of the District authorising him to realise the amount as arrear of land revenue from the movable or immovable property or both, of the offender/defaulters. Thus, argued the learned counsel, the procedure adopted by the Chief Judicial Magistrate was not warranted.

(4) After hearing the learned counsel for the parties, I find force in the contentions raised on behalf of the petitioner. The Chief Judicial Magistrate was not competent for attachment or sale of any immovable property under section 421 of the Code of Criminal Procedure. For that purpose he could issue a warrant to the Collector of the District as provided therein.

(5) Consequently, this revision petition succeeds; the impugned orders are set aside. The parties have been directed to appear on September 4, 1989, in the Court of Chief Judicial Magistrate, Karnal. He will issue the necessary warrants to the Collector of the District authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the offender/defaulters i.e. Ram Dia as provided under section 421 Cr.P.C.

S.C.K.

Before : J. V. Gupta, J.

SARASWATI AND OTHERS,—*Petitioners.*

versus

HAZARI LAL AND OTHERS,—*Respondents.*

Civil Revision No. 1827 of 1988.

8th August, 1989

Code of Civil Procedure (V of 1908) O. 22 Rl. 4 (As amended by Punjab Government)—Defendant dying during trial—Application for impleading his legal representatives—Dismissal of such application as barred by time—Justification of such an Order.

Saraswati and others v. Hazari Lal and others (J. V. Gupta, J.)

Held, that there was no limitation for bringing on record the legal representatives of the deceased defendant in view of the amendment of this Court in Order 22, Rule 4, CPC,—*vide* Punjab Government Gaz., 11th April, 1975, Part II, wherein it has been provided that if 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. That being so, the question of abatement does not arise and the legal representatives were entitled to be brought on record at any time.

(Para 2)

Petition Under Section 115 CPC for revision of the order of the court of Shri Jagdev Singh, HCS, Sub Judge IIIrd Class, Hissar dated 14th June, 1988 dismissing the application, filed by the defendant for impleading L.Rs.

Claim : Suit for Declaration.

Claim in Revision : For reversal of the order of the lower court.

Rakesh Kumar Jain, Advocate, for the Petitioners.
Ajay Lamba, Advocate, for the Respondents.

JUDGMENT

J. V. Gupta, J.

(1) This revision petition is directed against the order of the trial Court, dated June 14, 1988, whereby the application filed on behalf of the legal representatives of deceased Bhal Singh defendant, has been dismissed as barred by time.

(2) It is no more disputed that there was no limitation for bringing on record the legal representatives of the deceased defendant in view of the amendment of this Court in Order 22, Rule 4, CPC,—*vide* Punjab Government Gaz., 11th April, 1975, Part II, wherein it has been provided that if 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. That being so, the question of abatement does not arise and the legal representatives were entitled to be brought on the record at any time.

(3) Consequently, this petition succeeds; the impugned order is set aside and the application for bringing on record the legal representatives is allowed. Since further proceedings were stayed at the time of motion hearing by this Court, the parties are directed to appear in the trial Court on September 4, 1989.

(4) Since the suit was filed in the year 1985, it is directed that the parties will lead their evidence at their own responsibility for which one opportunity be given to each party. However, dasti summons may be given, if so desired, as contemplated under Order 16, Rule 7-A, C.P.C.

S.C.K.

Before : J. V. Gupta, J.

DHARAM SINGH AND ANOTHER,—*Petitioners.*

versus

ADDU RAM AND OTHERS,—*Respondents.*

Civil Revision No. 1811 of 1988.

11th August, 1989.

Code of Civil Procedure (V of 1908) O. 1 Rl. 10—Impleading of parties—Applicants having same interest as Plaintiffs—Whether such applicants can be impleaded as defendants.

Held, that added Defendants could file a separate suit to establish their right, if any, in the suit property. In any case, at this stage it is directed that either the said defendants be impleaded as plaintiffs if the plaintiffs have no objection and if they cannot be impleaded as plaintiffs, they be directed to file a separate suit. In the present suit they could not be allowed to take up the defence which effects the rights of defendants 1 and 2.

(Para 4)

Petition Under Section 115 C.P.C. for revision of the order of the Court of Shri Balbir Singh, H.C.S., Addl. Senior Sub Judge, Bhiwani dated 16th May, 1988 dismissing the application filed by defendants No. 1 and 2 and ordering that the case is adjourned to 20th May, 1988, for filing replication.

Claim : Suit for declaration that the General Power of Attorney No. 59 registered on 13th May, 1983 by plaintiff in favour of defendant No. 1 is wrong, against law and facts and is based upon fraud and is not binding on the rights of the plaintiff and the registered Patta Nama dated 6th June, 1983 in favour of defendant No. 2 by