

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 169 of 2007.

Judgement reserved on: 6.12.2007.

Date of decision: 11.1.2008.

Col. (Retd.) S.S.Multani

..... Petitioner.

Vs.

Smt. Vaneeta Jain & ors.

.... Respondents.

Coram

The Hon'ble Mr. Justice Kuldeep Singh, Judge.

Whether approved for reporting?

**For the petitioner : Mr. G.D.Verma, Sr. Advocate with
Mr. B.C. Verma, Advocate.**

**For the Respondents : Mr. C.P.Sood, Advocate, and Mr.
Anand, Sharma, Advocate, for
respondents No. 1 to 5.**

Kuldeep Singh, Judge.

This revision petition has been directed against the order dated 23.7.2007 passed in CMP No. 262-S/6 of 2007 and order dated 2.8.2007 passed in CMP No. 305-S/6 of 2007 in Civil Suit No. 9-S/1 of 1997/85, by the learned District Judge, Shimla, dismissing the application of petitioner under Order 22 Rule 4, Order 8 Rule 1 read with Section 151 CPC and another application under Order 1 Rule 10, Order 8 Rule 1 read with Section 151 CPC.

2. The facts in brief are that Civil Suit No. 29 of 1985 for possession by specific performance of agreement dated 26.3.1982

Whether the reporters of the local papers may be allowed to see the Judgment?

was filed in this court against P.S.Multani father of the petitioner. . The suit on enhancement of pecuniary jurisdiction of lower courts, was assigned to the court of District Judge, Shimla where it was registered as Civil Suit No. 9-S/1 of 1997/85. The suit was decreed on 7.1.1998 and RFA No. 133 of 1998 was filed against the judgement, decree dated 7.1.1998, which was dismissed by this court on 29.8.2005. The plaintiff, besides other directions, was directed to deposit the sale consideration in the Registry of this Court within four weeks from 29.8.2005 for being paid to the defendant after the execution and registration of the sale deed. Civil Appeal No. 2494 of 2007 was filed in the Hon'ble Supreme Court against the judgement dated 29.8.2005 in RFA No. 133 of 1998. The Hon'ble Supreme Court on 14.5.2007 has allowed the appeal, impugned judgement and order of the High Court as also the ex-parte decree passed by the learned District Judge on 7.1.1998 were set aside and the parties were directed to appear before the learned District Judge on 11.6.2007.

3. The petitioner on 3.7.2007 filed CMP No. 262-S/6 of 2007 under order 22 Rule 4(2), Order 8 Rule 1 read with Section 151 CPC in the court of learned District Judge, Shimla, seeking permission to allow him to take different stand than that of other defendants. In the application, it has been submitted that petitioner is one of the legal representatives of deceased P.S. Multani and his interest in the suit is adverse to the interest of deceased P.S. Multani and also present defendant Smt. Lal Devi. The petitioner was the actual and real owner of the suit property. He was in service in the

Armed Forces, he had executed a general power of attorney which on account of differences was revoked by writing a letter, which was acknowledged by late P.S. Multani, but he (P.S. Multani) got the suit property transferred in his name and kept the transfer a closely guarded secret. The petitioner came to know the transfer of the suit property in favour of P.S. Multani only in the year 1999 and then petitioner filed a suit against his father, which was decided in 2002. The petitioner was not told about the alleged agreement to sell with the predecessor in interest of the plaintiffs or about the litigation. The petitioner filed a suit for declaration at Shimla, which would be withdrawn in view of the fact that the petitioner will take all defences in the present suit. In this background, the petitioner filed the application to allow him to take different stand than that of other defendants.

4. This application was contested by taking the pleas that application is not maintainable, application is malafide and has been filed to delay the decision in the case. The petitioner was served in RFA No. 133 of 1998 and he was represented by a counsel. The application is not bonafide otherwise he would have taken this plea when the appeal was pending in the High Court. The petitioner is one of the legal representatives of P.S. Multani and has been brought on record, he cannot set up a new or individual right. He can continue with the proceedings on the same cause of actions on which his predecessor in interest P.S. Multani was continuing. It has been denied that the interest of the petitioner is adverse to deceased P.S. Multani and Smt. Lal Devi. The petitioner cannot be permitted to

take different stand than the one taken by his predecessor. The CMP No. 262-S/6 of 2007 was dismissed by learned District Judge on 23.7.2007.

5. The petitioner on 25.7.2007 filed another application, being CMP No. 305-S/6 of 2007 under Order 1 Rule 10, Order 8 Rule 1, read with Section 151 CPC for being impleaded as a defendant, seeking permission to take adverse pleas and file written statement. The petitioner took more or less same grounds for impleading him as defendant as he had taken in CMP No. 262-S/6 of 2007. The suit for declaration filed by petitioner would be withdrawn in view of the fact that the petitioner will take all defences in the present suit. In the application, it has been submitted that petitioner earlier filed an application under Order 22 Rule 4(2) etc. CPC, which was dismissed and since the petitioner has his individual right, therefore, he filed an application under Order 1 Rule 10 CPC. This application was also contested by filing reply more or less on the same grounds as were taken in reply to application under Order 22 Rule 4(2) etc. CPC. It has been submitted that petitioner cannot be impleaded as party to the suit to set up independent right.

6. I have heard Mr. G.D.Verma, learned Senior Advocate, appearing for the petitioner and Mr. C.P.Sood, Advocate, appearing for the respondents and gone through the record. It has been submitted by Mr. Verma, learned Senior Counsel that petitioner is the son and one of the legal representatives of P.S. Multani. Smt. Lal Devi is the widow of P.S. Multani. The interest of petitioner in the suit is adverse to deceased P.S. Multani as well as Smt. Lal Devi. In fact,

he was the owner of the suit property, which was wrongly, illegally transferred in favour of P.S. Multani and later on became the subject matter of agreement and of the suit. The petitioner was not aware of the proceedings and when he came to know about the proceedings, he took steps to protect his interest in the suit property and he even filed a suit. In the present suit he has independent right to protect his interest by taking such pleas which are available to him in law. He is not bound by the pleas taken by P.S. Multani or Smt. Lal Devi, more particularly when his interest is adverse to P.S. Multani and Smt. Lal Devi in the suit. The learned counsel for the respondents has submitted that petitioner is the son and one of the legal representatives of P.S. Multani and he can continue in the suit in the capacity of legal representative and he cannot take any stand contrary to the stand earlier taken by P.S. Multani.

7. The learned District Judge, vide order dated 23.7.2007 dismissed CMP No. 262-S/6 of 2007 on the ground that if a legal representative wants to take an adverse stand, he has to get himself or herself impleaded as party under Order 1 Rule 10 CPC. The CMP No. 305-S/6 of 2007 was dismissed by learned District Judge on the grounds that petitioner has already filed an independent suit, which is pending and the application is also not maintainable on the ground that petitioner is debarred from moving such application because he could have done so when RFA was pending in this Court. He opted not to file an application in the appeal, therefore, he cannot file the application, under Order 1 Rule 10 CPC.

8. As a proposition of law, a legal representative of a deceased defendant is entitled to defend the suit on the pleas taken by his predecessor, but if he has independent right then by impleading himself in the suit in his independent capacity he can take all pleas in his own right, which are available to him in law. In **Vidyawati vs. Man Mohan and others**, AIR 1995 SC 1653, the Hon'ble Supreme Court has held as follows:-

“..... It is true that when the petitioner was impleaded as a party- defendant, all right under Order 22, Rule 4(2) and defences available to the deceased defendant become available to her. In addition, if the petitioner had any independent right, title or interest in the property then she had to get herself impleaded in the suit as a party defendant in which event she could set up her own independent right, title and interest, to resist the claim made by the plaintiff or challenge the decree that may be passed in the suit. This is the view the Court below has taken rightly.”

In the present case, it is to be seen whether petitioner has prima facie established his independent right in the suit property and for that reason he is entitled to implead himself as defendant in his own right.

9. A copy of plaint Annexure P-9 of Civil suit titled Col. S.S.Multani vs. Vaneeta Jain etc. has been placed on record on the file of revision petition. In this suit besides other prayers, a prayer has been made that the decree dated 7.1.1998 passed by the learned District Judge, Shimla be declared illegal, inoperative, void, ab-initio in view of decree passed in Civil Suit No. 259/1 of 1999 titled Surinder Singh Vs. Puran Singh etc. In Annexure P-9, it has been pleaded

that petitioner purchased the suit property i.e. khasra No. 149 to 156 and adjoining land in the year 1961. He during military service gave general power of attorney to his father late P.S.Multani on 14.9.1961 to manage the property. P.S. Multani under the garb of said general power of attorney in the year 1969 executed a sale deed in favour of his wife and mother of petitioner and thereafter got the entire property gifted in favour of P.S.Multani. The petitioner came to know this for the first time in 1999. Thereafter the petitioner filed Civil Suit No. 259/1 of 1999, which was compromised in 2002 and a decree in favour of petitioner was passed declaring the property comprised in khasra Nos.149/156 and adjoining land of Bromley estate mutated in favour of P.S.Multani illegal and void.This suit has been withdrawn on 3.8.2007 as per averment made in the revision petition. But fact remains that petitioner has pleaded some facts in plaint Annexure P-9.

10. In plaint Annexure P-9, it has not been pleaded that the general power of attorney executed on 14.9.1961 by petitioner in favour of P.S.Multani was withdrawn. In CMP No. 262-S/6 of 2007, it has been submitted that general power of attorney was revoked by writing a letter and to the same effect is the averment in CMP No. 305-S/6 of 2007 for withdrawing the general power of attorney, but neither copy of letter withdrawing general power of attorney nor the date of withdrawal of general power of attorney has been mentioned in any application. The petitioner in the applications has admitted the execution of general power of attorney regarding the suit property in favour of P.S. Multani. In plaint Annexure P-9, the petitioner has admitted that he came to know about the litigation between

P.S.Multani and predecessor in interest of the respondents in the year 2005, but surprisingly he filed CMP No. 262-S/6 of 2007 in the court of learned District Judge on 3.7.2007 and CMP No. 305-S/6 of 2007 on 25.7.2007. In the applications vague allegations have been made regarding the withdrawal of general power of attorney executed by the petitioner in favour of his father late P.S. Multani regarding the suit property.

11. The fact remains that on the date of execution of the agreement dated 26.3.1982 on the basis of which the predecessor in interest of the respondents filed the present suit, P.S. Multani was the owner of the suit property. In the plaint Annexure P-9 the petitioner has pleaded that he filed a Civil Suit No. 259/1 of 1999, which was compromised in the year 2002 and decree was passed in his favour, but there is no averment in the plaint Annexure P-9 that plaintiffs of the present suit were parties in that suit. The petitioner has placed nothing on record even prima facie that general power of attorney executed by him in favour of his father on 14.9.1961 was withdrawn and thereafter P.S. Multani, father of the petitioner misused general power of attorney for transferring the suit property as alleged by the petitioner. It is not the case of petitioner that under the general power of attorney P.S.Multani was not authorized to transfer the suit property. The petitioner is a party in the suit as legal representative of P.S. Multani. He has placed nothing on record so as to permit him to defend the suit in his own right. The applications being CMP No. 262-S/6 of 2007 and CMP No. 305-S/6 of 2007 are not bonafide. These have been filed in order to prolong the decision in the suit.

These applications otherwise also suffer from the vice of delay and laches. The suit was filed in the year 1985 and the applications have been filed in the year 2007. It is not believable that petitioner was not aware of the litigation during this period. There is no error of jurisdiction on the part of learned District Judge in dismissing the applications. No case for interference has been made out.

12. No other point was urged.

13. The result of the above discussion, there is no merit in the revision petition, which is dismissed with costs quantified at Rs.2000/-. The parties through their counsel are directed to appear before the learned District Judge on 17.1.2008. Interim order, dated 5.10.2007, shall stand vacated. The record of the suit be sent back to learned District Judge immediately so as to reach well before 17.1.2008.

January 11, 2008.
(Hem)

(Kuldip Singh)
Judge.