

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMP(M) No. 159 of 2015.

Date of decision: 31/03/2017

Kehar Singh & Others.

...applicants.

Versus

Kunta Devi and others

Respondents.

Coram

The Hon'ble Mr. Justice Sureshwar Thakur, J.

***Whether approved for reporting?*¹**

For the applicants

Mr. Suresh Singh, Proxy Counsel.

For the respondent:

**Mr. Prashan Kumar Sharma,
Proxy Counsel.**

Sureshwar Thakur, J. (oral)

With the application at hand stands appended, a death certificate, disclosing therewithin the occurrence of demise of one Rekha Devi on 1.3.1996. However, it stands divulged in the application at hand qua Rekha Devi also holding the alias of Reshan Devi, factum whereof stands supported by an affidavit, thereon the death certificate bearing the name of Rekha Devi can be hence concluded to be qua also Reshan Devi, the

¹ *Whether the reporters of the local papers may be allowed to see the Judgment?*

former name holding an alias of Reshan Devi whereupon reiteratedly both names hold alignment with the identity of one person Apparently her demise has occurred during the pendency of the Civil Suit before the learned Civil Judge (Junior Division)-II, Kangra, District Kangra. However no application stood instituted therebefore for hers standing ordered to be substituted by her LRs nor any order stands pronounced by the learned trial Court qua hers' name being directed to be deleted from the apposite array of co-plaintiffs. Consequently, the application at hand, for her name being ordered to be substituted by her LRs, is not maintainable hereat, conspicuously when the learned trial Court whereat her demise occurred alone enjoys the jurisdictional competence to pronounce an order for her substitution by her LRs. Moreover, with the learned Civil Judge pronouncing a verdict upon the Civil Suit despite occurrence of the name of deceased co-plaintiff aforesaid in the apposite memo of parties embodied in its verdict besides with the learned Appellate Court also proceeding to pronounce a verdict despite occurrence in the array of co-respondents, the name of deceased co-plaintiff

aforesaid hence renders the verdicts of both the learned trial Court and of the learned Appellate Court to stand pronounced despite occurrence in the memo of parties of a dead person who neither stood ordered to be deleted from the apposite array of litigants nor her LRs stood ordered to be substituted in her place. In aftermath, both the verdicts stand stained with a vice of nullity theirs standing pronounced against a dead person, hence, they are quashed and set-aside. Therefore, the instant application for ordering the substitution of deceased Reshan Devi by her LRs is dismissed, as not maintainable, so also the pending applications. However, it is open for the learned counsel for the applicant to make an appropriate motion before the learned trial Court, for facilitating it, to pronounce an appropriate order thereupon. It is necessary to allude to the factum qua her name continuing to stand reflected in the execution petition filed before the learned Executing Court also hers standing represented by her counsel.

2. The matter is remanded to the learned trial Court, to, after pronouncing an adjudication, on an application preferred therebefore for the relevant

purpose, proceed to decide the suit afresh. The parties are directed to appear before the learned trial Court on 29.4.2017.

31st March, 2017.
TM

(Sureshwar Thakur)
Judge.