

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

ON THE 30th DAY OF NOVEMBER, 2021

BEFORE

HON'BLE MR. JUSTICE AJAY MOHAN GOEL

REGULAR SECOND APPEAL No.214 of 2021

Between:

STATE OF HIMACHAL
PRADESH THROUGH
DISTRICT COLLECTOR,
SOLAN.

....APPELLANT.

(BY MR. ASHOK SHARMA, ADVOCATE GENERAL, WITH MR. ADARSH SHARMA, MR. SANJEEV SOOD, ADDITIONAL ADVOCATES GENERAL AND MR. KAMAL KANT CHANDEL, DEPUTY ADVOCATE GENERAL)

AND

1. RISHI RAM,
2. DAULAT RAM SON OF SH.
NARAYNU,
3. SMT. MEERA DEVI, W/O
SH. RISHI RAM, S/O SH.
NARAYNU,
4. GAMBHIRU, W/O SH.
DAULAT RAM, S/O SH.
NARAYNU,

ALL ARE RESIDENTS OF
VILLAGE CHAMIYA GANGURI,
TEHSIL KASAULI, DISTRICT
SOLAN, H.P.

....RESPONDENTS.

5. SMT. RAMA DEVI, W/O SH.
 KRISHNA D/O SMT. SHEELA,
 R/O VILLAGE SHIVA,
 PARGANA BHAOLI, TEHSIL
 KASAULI, DISTRICT SOLAN,
 H.P.

6. SMT. TARA W/O SH.
 RATTAN LAL, D/O SMT.
 KRISHNA, R/O VILLAGE
 NAKIYAR, PARGANA
 AJMERGARH, TEHSIL
 KASAULI, DISTRICT SOLAN,
 H.P.

.... PROFORMA RESPONDENTS.

**(BY MR. SUDHIR THAKUR, SENIOR ADVOCATE, WITH MR.
 KARUN NEGI, ADVOCATE, FOR RESPONDENTS NO.1 TO 3.
 RESPONDENT NO.4 IS DEAD.
 MR. O.C. SHARMA, ADVOCATE, FOR RESPONDENTS NO.5
 AND 6)**

Whether approved for reporting?¹ No

This appeal coming on for admission this day, the Court passed the following:

J U D G M E N T

CMP No.599 OF 2020

Having heard learned counsel for the parties, this application is allowed and disposed of by condoning the delay in filing the appeal.

¹

RSA No.214 of 2021 & CMP(M) Nos. 688 and 689 of 2021

Appeal be registered.

By way of CMP(M) Nos. 688 and 689 of 2021, a prayer has been made to bring on record legal representatives of deceased respondent No.4 (Smt. Gambhiru). When these applications were taken up for consideration, it transpired that deceased respondent No.4 (Smt. Gambhiru) has not died during the pendency of the present appeal, but during the pendency of the first appeal.

2. In this view of the matter, this Court is of the considered view that the under challenge by way of this appeal, i.e. judgment and decree dated 29.06.2019, passed by the Court of learned Additional District Judge-1, Solan, District Solan, H.P., in Civil Appeal No.17-S/13 of 2016, titled as The State of Himachal Pradesh through District Collector, Solan, H.P. Versus Rishi Ram, is not sustainable in the eyes of law and is a nullity in view of the law laid down by Hon'ble Supreme Court of India in *(2017) 13 SCC 414*, titled as *Gurnam Singh (Dead) Through Legal Representatives and Others Versus Gurbachan Kaur (Dead)*

by Legal Representatives.

3. At this stage, learned counsel for the parties submit that in view of the law laid down by Hon'ble Supreme Court of India in *(2017) 13 SCC 414*, titled as *Gurnam Singh (Dead) Through Legal Representatives and Others Versus Gurbachan Kaur (Dead) by Legal Representatives*, it will be in the interest of justice in case this appeal is disposed of at this stage itself, by setting aside the judgment and decree passed by the Court of learned Additional District Judge-I, Solan, District Solan, H.P. in Civil Appeal No.17-S/13 of 2016, titled as The State of Himachal Pradesh through District Collector, Solan, H.P. Versus Rishi Ram & others, decided on 29.06.2019 and by remanding the matter back to the learned First Appellate Court with the observation that effect of death of respondent No.4 be gone into by said Court in case any application in this regard is filed by the appellant herein. Ordered accordingly.

4. Taking into consideration the fact that the judgment and decree passed by the Court of learned Additional District Judge-I, Solan, District Solan, H.P. in Civil Appeal No.17-S/13 of 2016, titled as The State of Himachal Pradesh through District

Collector, Solan, H.P. Versus Rishi Ram & others, decided on 29.06.2019, was passed ignoring the factum of death of respondent No.4 before the said Court, who died on 17.08.2016 during the pendency of the appeal, this appeal is allowed by setting aside the judgment and decree passed by the Court of learned Additional District Judge-I, Solan, District Solan, H.P. in Civil Appeal No.17-S/13 of 2016, titled as The State of Himachal Pradesh through District Collector, Solan, H.P. Versus Rishi Ram & others, decided on 29.06.2019.

5. As this appeal is being allowed on technical ground, it is ordered that the first appeal decided by the Court of learned Additional District Judge-I, Solan, District Solan, H.P. in Civil Appeal No.17-S/13 of 2016, titled as The State of Himachal Pradesh through District Collector, Solan, H.P. Versus Rishi Ram & others, on 29.06.2019, shall stand revived. In the event of any application being filed by the appellants therein to bring on record legal representatives of deceased respondent No.4 (Smt. Gambhiru), then appropriate orders thereupon shall be passed by the learned First Appellate Court without being influenced by any observation made by this Court in this order.

6. It is clarified that the issue of abatement post death of respondent No.4 shall be gone into by the learned First Appellate Court. The represented parties are directed to appear before the learned First Appellate Court on 22.12.2021. It is further ordered that the proceedings in appeal be taken to their logical conclusion as expeditiously as possible and not later than six months as from the date of appearance of the parties before the learned First Appellate Court.

7. Present appeal is disposed of in above terms. Pending miscellaneous applications, if any, also stand disposed of. Interim order, if any, stands vacated.

November 30, 2021
(rishi)

(Ajay Mohan Goel)
Judge