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KARAM KAUR

v.

JALANDHAR IMPROVEMENT TRUST AND ORS.
(Civil Appeal Nos. 4915-4918 of 2014)

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APRIL 28, 2014

[SUDHANSU JYOTI MUKHOPADHAYA AND
KURIAN JOSEPH, JJ.]

Code of Civil Procedure, 1908 – O.22, r.3 and s.151 –

- C *Suit filed by appellant's husband for declaration that he was entitled to vacant possession of the plot of land allotted to him – Trial Court decreed the suit – First Appellate Court reversed the judgment – Second appeal filed by appellant's husband – During pendency of second appeal, appellant's husband*
- D *died leaving behind appellant (his widow) along with 2 sons and 3 daughters – Second appeal dismissed for non-prosecution – Later, appellant, claiming herself to be sole legal heir on basis of a Deed of Family Settlement, filed application for setting aside the order dismissing the second*
- E *appeal for non-prosecution – Appellant also filed application u/Or.22, r.3 CPC for bringing the LRs on record and application u/s.5 of the Limitation Act for condonation of delay – All applications dismissed by the High Court – Justification – Held: Justified – High Court rightly rejected all the*
- F *applications – Present case not a fit case to condone delay, bring the LRs on record and to set aside the order of abatement – Appellant is widow of original plaintiff and had knowledge of pendency of the second appeal – Her plea that she was told by her husband that the counsel would inform about the hearing of the application, cannot be ground to entertain application for condonation of delay of more than seven years for preferring the petition for substitution – Moreover, purported deed of family settlement did not state*
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that the right to sue survived only on the appellant and could not be relied upon to exclude the other legal heirs – Limitation Act, 1963 – s.5.

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Land belonging to appellant's father-in-law was acquired by the respondent-Improvement trust, and in lieu thereof, another plot of land was allotted to appellant's husband. However, since vacant possession of the allotted plot was not delivered to the appellant's husband, he filed civil suit for declaration that he was entitled to vacant possession of the plot. The suit was decreed by the trial court. On appeal by respondent-trust, the First Appellate Court reversed the judgment of trial Court. The appellant's husband then filed second appeal. During pendency of the second appeal, appellant's husband died leaving behind appellant (his widow) along with 2 sons and 3 daughters. The second appeal was dismissed for non-prosecution.

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Later, the appellant, claiming herself to be the sole legal heir in whom the right to sue survived on the basis of a Deed of Family Settlement, filed application for setting aside the order dismissing the second appeal for non-prosecution. The appellant further filed an application under Order 22 Rule 3 CPC for bringing the LRs on record; and another application under Section 5 of the Limitation Act for condonation of delay. All the applications were dismissed by the High Court.

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Before this Court, it was pleaded on behalf of the appellant that she had no idea about dismissal of the second appeal for non-prosecution; and also that she is an illiterate lady and was informed by her husband that his appeal was not likely to be taken up for the next 20 years and their counsel would intimate the date whenever it is listed. The appellant further pleaded that she was not aware that the LRs were required to be brought on record after the death of her husband.

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A Dismissing the appeals, the Court

HELD:1. The present case was not a fit case to condone delay, bring the LRs on record and to set aside the order of abatement. The High Court rightly rejected all the applications. [Para 13]

B 2. Admittedly, the appellant's husband died on 14th December, 2003; the appellant is his widow and she had knowledge of the pendency of the second appeal. The plea of appellant that she was told by her husband that

C counsel would inform about the hearing of the application, cannot be a ground to entertain the application for condonation of delay of more than seven years for preferring the petition for substitution. A petition for substitution was filed by respondent Nos.2 and 3

D before the Second Appellate Court. Respondent Nos.2 and 3 had the knowledge of the death of the appellant's husband and, therefore, they filed petition for substitution. However, they withdrew the aforesaid application for substitution which was followed by

E petition for substitution petition filed by the appellant. In the petition for substitution filed on behalf of respondent Nos.2 and 3, it was not stated that vide deed of family settlement dated 21st January, 2010 executed between the LRs of the appellant's father-in-law (including

F respondent Nos.2 to 5) and other legal heirs of the appellant's husband the right to sue survived only on the appellant. Apart from the fact that the aforesaid family settlement was not brought on record by respondent Nos.2 and 3 before the Second Appellate Court while the petition for substitution filed, so called family settlement dated 21st January, 2010 cannot be relied upon to exclude the other legal heirs who had a right to be substituted due to the death of the original plaintiff i.e. the appellant's husband. [Para 14] [717-B-F]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. A 4915-4918 of 2014.

From the Judgment and Order dated 08.07.2011 of the High Court of Punjab & Haryana at Chandigarh in Civil Misc. No. 11669 to 11672-C of 2010 in R. S. A. No. 1908 of 1995. B

V. K. Jhanji, Jyoti Mendiratta, Devanshu Kumar for the Appellant.

S. C. Gupta, Birendra K. Mishra, Poonam, Abhinav Singh, Praneet Ranjan for the Respondents. C

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Leave granted. D

2. These appeals are directed against the judgment dated 8th July, 2011 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Misc. Nos. 11669-C to 11672-C of 2010 in R.S.A. No. 1908 of 1995. By the impugned judgment, the High Court rejected the following Petitions: E

- (i) Civil Misc. Application under Section 151 C.P.C. for setting aside order dated 14th May, 2010 dismissing the appeal for non-prosecution; F
- (ii) Civil Misc. Petition under Section 5 of Limitation Act for condonation of delay in bringing LRs on record and for setting aside order dismissing appeal in default; and
- (iii) Civil Misc. Application under Order 22 Rule 3 C.P.C. for bringing LRs. of deceased appellant on record. G

However, the High Court allowed the other applications under Sections 151 C.P.C to place on record the copies of judgment and decree dated 20th January, 2004 passed in RSA H.

- A No.1822 of 2003 – *Ajinder Kaur vs. Jalandhar Improvement Trust* and judgment dated 15th March, 2000 in RSA No.3673/2000 – *Jalandhar Improvement Trust vs. Harbhajan Kaur and others*.
- B 3. The case of the applicant, wife of original plaintiff – Ramesh Chander is that one Nasib Chand father of Ramesh Chander and respondent Nos.3 to 5 and husband of respondent No.2 was the owner of land measuring 28 Kanals 5 marlas situated at Basti Sheikh, Jalandhar, which was acquired by the respondent -Jalandhar Improvement Trust (hereinafter referred to as the “Trust”) for development of scheme known as “13.37 acres scheme”. Nasib Chand died on 8th May, 1987 leaving behind Ramesh Chander-original plaintiff and respondent Nos.2 to 5 as his heirs. The original plaintiff-Ramesh Chander made many requests to the respondent-Trust for allotting him a plot in lieu of the acquired land. Further case of the appellant is that the respondent-Trust ultimately allotted the disputed plot in a scheme known as “55 acres development scheme” to him. Thereafter, Ramesh Chander requested the respondent-Trust to accept instalment of Rs. 10,000/-and deliver vacant possession of the plot but to no effect. He served notice on the Trust also for admitting his claim and to hand over his possession of the allotted plot to him, but to no avail.
- F 4. Ramesh Chander, therefore, filed Civil Suit No.123/1988 on 2nd March, 1988 for declaration that he was entitled to deposit Rs.10,000/-towards first instalment of plot No.456 and balance price thereof, allotted to him in “55 acres development scheme” and to its vacant possession and for mandatory injunction, directing respondent No.1 – Trust to receive the earnest money from him and to deliver its possession.
- G 5. The defendant-respondent No.1 appeared and filed a written statement. The suit was decreed by Sub-Judge by judgment and decree on 10th June, 1988. Being aggrieved, the defendant-respondent filed an appeal, which was allowed and

the case was remanded back to the Trial Court. A

6. After remand, a fresh written statement was filed by the Trust, in which the Trust did not deny the factum that the plaintiff was a Local Displaced Person but disputed legality of allotment regarding Plot No.456 in 55 acre scheme on the ground that the Chairman had no right to allot any plot, and Plot No.456 was wrongly allotted. The Trial Court on hearing the parties decreed the suit in favour of plaintiff-Ramesh Chander and against the respondent-Trust holding as under:

“Since plot No.456 in 55 acre scheme has been allotted to the plaintiff, as Local Displaced Person on account of acquisition of the land of his father by the deft-trust and even possession of that plot is with him, as deposed by him attorney Prem Pal PW1, he is entitled to retain the allotment Prem Pal PW1, he is entitled to retain the allotment and its possession. The defendant-Trust is legally bound to honour that allotment and accept the price of the same from him as per the trust rules by instalments. Plaintiff has no doubt claimed possession of the plot in the suit but it has come in the evidence of Prem Pal (PW-1) that possession is with him plaintiff of the allotted plot and his this part of statement has not been controverted by Om Parkash (DW-1) official of the Trust.”

7. On appeal preferred by the respondent-Trust, the First Appellate Court by judgment and decree dated 18th May, 1995 reversed the judgment of the Trial Court. The First Appellate Court held that the allotment letter issued by the then Chairman of the Trust fell foul of the relevant rules. The First Appellate Court further observed:

“When a certain act of public functionary is ultra vires of the provisions of statute or acted beyond his power or in colourable exercise of power, the aggrieved department can get rid of the said impugned order and challenge the

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- A *same, and no plea of estoppels against the statute can be raised by the opposite to party taking illegal advantage of impugned action of the public authority. In such scenario no plea can be entertained that the Government has not withdrawn power of the Chairman for the allotment of plots to Local Displaced Person when the power of allotment has never been vested in the Chairman, but the Trust alone."*
- B *Original plaintiff-Ramesh Chander then filed second appeal R.S.A. No.1908 of 1995 against the judgment and decree dated 18th May, 1995 passed by the First Appellate Court. The second appeal was admitted on 21st August, 1995 and operation of the judgment dated 18th May, 1995 was stayed. The second appeal remained pending.*

- C *8. During the pendency of the said appeal, Ramesh Chander died on 14th December, 2003 leaving behind his widow(applicant-herein) along with two sons and three daughters. However, no petition for substitution was filed for years. After six and half years of the death of the original plaintiff-Ramesh Chander, CM No.4841-C of 2010 was filed in the second appeal on 22nd April, 2010 on behalf of the respondent Nos.2 and 3 before the High Court for bringing on record the following legal heirs of the deceased-Ramesh Chander:*

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 - (i) Smt. Karam Kaur widow of Sh. Ramesh Chander,
 - (ii) Harish Chander son of Sh. Ramesh Chander.
 - (iii) Raman Kumar son of Sh. Ramesh Chander all residents of Buta Mandi, Jalandhar, Tehsil and District Jalandhar.
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 - (iv) Smt. Nirmala Devi D/o Sh. Ramesh Chander, wife of Sh. Rajesh Kumar, resident of 182-F, Rishi Nagar, Ludhiana, Tehsil and District Ludhiana.
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(v) Smt. Rita Kumari, D/o Sh. Ramesh Chander w/o Sh. Surinder Pal, resident of H.No.588, New Arya Nagar, Kartarpur, District Jalandhar. A

(vi) Smt. Sita Devi d/o Sh. Ramesh Chander w/o Sh. Rajinder Kumar, resident of H.No.702, Phase VII, S.A.S. Nagar, Mohali, District Mohali." B

The aforesaid application was supported by an affidavit of Jagdish Chander, son of Nasib Chand i.e. respondent No.3 in the appeal. In the said petition following order was passed on 14th May, 2010: C

"This is an application under Order 22 Rule 3 read with Section 151 of the Code of Civil Procedure for bringing on record the legal heirs of the appellant, who is stated to have died on 14.12.2003. D

This application has been moved by respondents No.1 and No.3 who are proforma respondents in this appeal and no relief has been claimed against them whereas the LRs of Ramesh Chander-appellant have not chosen to come forward to pursue this appeal. E

Faced with this situation, learned counsel for the applicant (i.e. Respondents No.2 and 3) prays for withdrawal of the aforesaid application.

Ordered accordingly. F

9. The application for bringing on record the LRs of the original plaintiff-appellant before the Second Appellate Court at the behest of respondent Nos.2 and 3, having withdrawn was dismissed as withdrawn. Since the legal representatives of the original plaintiff-appellant in R.S.A.No.1908 of 1995 had chosen not to come forward to pursue the appeal, the second appeal was dismissed for non-prosecution. G

10. After the dismissal of the petition for substitution (CM

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- A No.4841-C/2010) due to withdrawal of such application by respondent Nos.2 and 3, the applicant-Karam Kaur filed Civil Misc. No.11669-C/2010 for setting aside the order dated 14th May, 2010 dismissing the appeal for non-prosecution claiming herself to be the sole legal heir in whom the right to sue survived
- B on the basis of a Deed of Family Settlement dated 21st January, 2010 executed between the LRs. of Nasib Chand including respondent Nos.2 to 5 in this appeal and other legal heirs of Ramesh Chander. The aforesaid Deed of Family Settlement dated 21st January, 2010 was also placed on record in CM No.11670-C of 2010 for bringing her on record LRs of Ramesh Chander. An application under Section 5 of the Limitation Act was also filed for condonation of delay in filing the restoration application and delay in bringing on record the LRs. The delay was calculated taking the date of knowledge from 1st April, 2010 on the basis of advice of Shri Vijay Rana, Advocate for respondent Nos.2 and 3. The applicant also filed an application, CM No.13869-C of 2010 on 1st December, 2010 for condoning the delay in bringing on record the LRs of the Ramesh Chander and for setting aside the order dismissing the appeal in default. The aforesaid applications were rejected by the impugned common order dated 8th July, 2011 passed by the High Court.

11. Learned counsel for the appellant took a similar plea as was taken before the High Court that the appellant had no idea about dismissal of the appeal for non-prosecution.

12. The appellant has also taken plea that she is an illiterate lady and was informed by her husband that his appeal was not likely to be taken up for the next 20 years and their counsel would intimate the date whenever it is listed. She was not aware that the LRs were required to be brought on record after the death of her husband.

13. Having heard the learned counsel for the parties and on perusing the record, we find that it was not a fit case to condone delay, bring the LRs on record and to set aside the

order of abatement, High Court rightly rejected all the A applications.

14. Admittedly, Ramesh Chander – the original plaintiff, appellant before the Second Appellate Court, died on 14th December, 2003; the appellant is the widow of Ramesh Chander and she had knowledge of the pendency of the second appeal. Her plea that she was told by her husband that counsel would inform about the hearing of the application, cannot be a ground to entertain the application for condonation of delay of more than seven years for preferring the petition for substitution. A petition for substitution was filed by respondent Nos.2 and 3 before the Second Appellate Court. Respondent Nos.2 and 3 had the knowledge of the death of Ramesh Chander and, therefore, they filed petition for substitution vide CM No.4841-C/2010. However, they withdrew the aforesaid application for substitution which was followed by petition for substitution petition filed by the appellant-Karam Kaur. In the petition for substitution filed on behalf of respondent Nos.2 and 3, it was not stated that vide deed of family settlement dated 21st January, 2010 executed between the LRs of Nasib Chand (including respondent Nos.2 to 5 to the appeal) and other legal heirs of Ramesh Chander the right to sue survived only on the appellant-Karam Kaur. Apart from the fact that the aforesaid family settlement was not brought on record by respondent Nos.2 and 3 before the Second Appellate Court while the petition for substitution filed, so called family settlement dated 21st January, 2010 cannot be relied upon to exclude the other legal heirs who had a right to be substituted due to the death of the original plaintiff-Ramesh Chander.

15. We find no merit in these appeals. The appeals are, accordingly, dismissed. No costs.