



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Revision Petition No. 208/2023

Smt. Kherunisha W/o Shri Bafat Sharif Ji, Aged About 42 Years,
Resident Of Kumarwada, Mt. Abu, Tehsil - Aburoad, District -
Sirohi. Address - Dua Pan Corner, Sanand House, Lake Road,
Mount Abu, District - Sirohi (Rajasthan).

----Petitioner

Versus

1. Lrs Of Jai Shiv Singh, S/o Shri Rudradutt Singh Through His Lrs.
2. Smt. Sridatir W/o Late Jai Shiv Singh, By Caste Vaghela Rajput, Resident Of Darbargarh, Tehsil - Sanand (Gujarat). Presently Resident Of Kalikunj, Sanand House, Mt. Abu, Tehsil - Abu Road, District - Sirohi (Rajasthan).
3. Shri Druv Singh S/o Late Jai Shiv Singh, By Caste Vaghela Rajput, Resident Of Darbargarh, Tehsil - Sanand (Gujarat). Presently Resident Of Kalikunj, Sanand House, Mt. Abu, Tehsil - Abu Road, District - Sirohi (Rajasthan).
4. Ku. Katyayini D/o Late Jai Shiv Singh, By Caste Vaghela Rajput, Resident Of Darbargarh, Tehsil - Sanand (Gujarat). Presently Resident Of Kalikunj, Sanand House, Mt. Abu, Tehsil - Abu Road, District - Sirohi (Rajasthan).

----Respondents

For Petitioner(s) : Mr. Shambhoo Singh Rathore

For Respondent(s) :

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Order

07/08/2024

1. The present revision petition has been preferred against the order dated 27.03.2023 whereby the application under Order XXII Rule 3 R/w Section 151 of the Code of Civil Procedure, 1908 as preferred by the plaintiff has been allowed and the application



under Order XXII Rule 9, CPC as preferred by the defendant for abatement of the suit has been rejected.

2. The arguments of counsel for the defendant-petitioner are three fold. Firstly, after the death of plaintiff Jai Shiv Singh, the landlord, no application for substitution of his legal representatives was filed within the prescribed time and hence, the suit abated. Secondly, only the wife, son and daughter of the deceased plaintiff Jai Shiv Singh have been sought to be substituted whereas the four sisters of Jai Shiv Singh are also his legal representatives and they also deserve to be impleaded/substituted in place of him. Thirdly, the suit property is an ancestral property and hence, the sisters of the deceased plaintiff, being the coparceners, would also fall in the category of legal representatives.

3. The Trial Court reached to a specific finding that plaintiff Jai Shiv Singh expired on 04.09.2021 and application under Order XXII Rule 3, CPC had been moved within a period of 90 days from the said date. Therefore, the application was very much within the limitation. So far as the impleadment of the sisters of the plaintiff is concerned, the learned Court below specifically concluded that they cannot be said to be the legal representatives in terms of law. The Court found that the wife, son and daughter of the plaintiff were very much surviving and had moved an application and hence, in terms of Order XXII Rule 3, CPC, only they can be said to be the legal representatives of the deceased plaintiff and therefore, permitted them to be taken on record.



4. In the specific opinion of this Court, the findings as reached by the learned Court below are totally in consonance with law. Order XXII Rule 3, CPC provides for substitution of the legal representatives of a deceased plaintiff.

Section 2(11), CPC defines 'legal representative' as under:

"(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;"

In the present matter, essentially the estate of the plaintiff would be represented by his first class heirs which undisputedly would be his wife, son and daughter. Learned counsel for the petitioner could not point out to any provision of law which prescribes for the sisters to be the legal representatives even where the first class heirs of a deceased plaintiff are surviving.

5. So far as the suit property being ancestral in nature is concerned; firstly, the present is not a suit qua any of the rights relating to the ownership of the property but is a suit for eviction against the tenant by the landlord. Secondly, the tenant has no locus standi to aver as to who would be the legal representatives of the plaintiff landlord. The said averment/objection, if any, can be raised by the aggrieved legal representatives only.



6. One more aspect which is relevant is that Smt. Purna Singh, one of the sisters of the deceased plaintiff, had earlier moved an application under Order I Rule 10, CPC for impleadment which had been rejected vide order dated 03.07.2018. Once the application for impleadment by one of the sisters having been rejected, it cannot be held that the other sisters would fall in the category of the legal representatives of the deceased plaintiff.

7. In view of the above observations, this Court is not inclined to interfere with the order impugned and the present revision petition is hence, dismissed.

8. The stay petition as well as all pending applications, if any, stand disposed of.

(MANOJ KUMAR GARG),J

52-GKaviya/-