

PUNJAB AND HARYANA HIGH COURT

Lalit Kumar

Vs

Jai Ram Dass

Civil Revision No. 42 of 1984

(S.P. Goyal, J.)

20.03.1984

JUDGMENT

S.P. Goyal, J.

1. (Oral) - Respondent Jai Ram Dass filed a suit to pre-empt the sale of the land in dispute made in favour of the petitioners, respondents No. 2 and 3 and Inder Singh. During the pendency of the suit, an application was moved for impleading the legal representatives of Inder Singh who was stated to have died prior to the filing of the suit. That application has been allowed by the impugned order holding that the mistake had been committed in good faith and the legal representatives ordered to be deemed to have been impleaded on the date of the institution of the suit, aggrieved thereby the defendants have come up to this Court in revision.

2. From the perusal of the impugned order, it is apparent that the trial Court did observe that the mistake had been made in good faith but recorded no reason for making this observation. Even in the application filed by the plaintiff there was no averment that the mistake in not impleading Inder Singh as respondent was committed in good faith or that due care and caution was taken by the plaintiff in impleading the deceased respondent as defendant. By virtue of the provisions of sub-rule (5) of Rule 10, Order 1 of the Civil Procedure Code, subject to the provisions of Indian Limitation Act, 1963, Section 21, the proceedings as against any person added as defendant are deemed to have begun only on the service of the summons on him. Proviso to sub-section (1) of the said section 21 vests discretion in the Court to order the suit as regards such party to be deemed to have been instituted on any earlier date if it is satisfied that the omission to include the party was due to the mistake made in good faith. A combined reading of the said two provisions leaves no manner of doubt that the Court can order the suit to be deemed to have been instituted on any earlier date against the party added later on if it is of the opinion that the omission to implead him was the result of a mistake made in good faith. The mistake can be said to have been committed in good faith if it occurs in spite of due care and caution on the part of the party concerned. As noticed above neither in the application nor in the impugned order any circumstance whatsoever has been disclosed which could show that the mistake in impleading the deceased vendee had been committed in good faith. The trial Court, therefore, acted illegally in exercise of its jurisdiction by ordering the suit to be deemed to have been filed against the

added party on the date the suit was originally instituted. Accordingly this petition is allowed and the impugned order modified to the extent that the suit against the added party shall be deemed to have been instituted on the date the summons were served on him. No costs.

Petition accepted.