

# RAJASTHAN HIGH COURT

Chandra Kala

Vs.

Kanak Mal

Civil Revn. Petn. No. 616 of 2000

(Dr. B.S. Chauhan, J.)

28.10.2002

## ORDER

**Dr. B.S. Chauhan, J.**

1. Though the matter is listed today in default as one of the non-petitioner has not been served, considering the urgency and pendency of the matter, with the consent of the learned counsel for the parties, it was heard on merits.

2. The instant revision has been filed against the impugned order dated 27-5- 2000 by which the application of the non-petitioner No. 2-Man Mal to the extent that the petitioners, who had been brought on record as legal heirs of one of the defendants in the suit Pan Mal cannot be permitted to file the written statement contrary to what had been taken by their predecessor-in- interest late Sri Pan Mal.

3. It is settled legal proposition that once the defendant had filed the written statement and made certain admissions and after his death if his LRs are brought on record, they cannot be permitted to take the stand contrary to what had been taken by their predecessor-in-interest for the reason that LRs put their feet in the shoes of the deceased party and it is not the case of present petitioners that they had an independent right or had been impleaded merely on their or someone else's application under Order 1, Rule 10, Civil Procedure Code. It is also not the case of the petitioners that they had an independent right and had been impleaded during the lifetime of deceased Pan Mal.

4. I find no force in the submission made by Sri Purohit that as the application for substitution itself had been field under Order 22, Rule 3 read with Order 1, Rule 10,

Civil Procedure Code, they shall be deemed to have been impleaded under the provisions of Order 1, Rule 10, Civil Procedure Code for the reason that in case of death of one of the parties, the application for substitution is always filed under Order 22 and Order 1, Rule 10, Civil Procedure Code serves the purpose either to delete the name of an unnecessary party or to implead him if he is found to be a necessary party. A caption or a title to an application cannot be treated as a determining factor as under which provision of law the application has been entertained as held by the Delhi High Court in *Smt. Thakuri Bai v. Laxmi Chand*,<sup>1</sup>

5. Thus, in view of the above I find no material irregularity in exercise of power by the learned trial Court. The revision petition stands accordingly dismissed. Interim order, if any, stands vacated.

Revision dismissed.

Cases Referred.

1. AIR 1990 Delhi 217