

Delhi High Court

Hitender Shokeen vs Rajan Kumar Shokeen & Ors on 12 September, 2025

* IN THE HIGH COURT OF DELHI AT
NEW DELHI
% Judgment
reserved on: 07.08.2025
delivered on: 12.09.2025 + Judgment
1797/2023 & CM APPL. 56818/2023 CM(M)
HITENDER
SHOKEENPetitioner
versus
RAJAN KUMAR SHOKEEN &
ORS.Respondent
Memo of Appearance
For the Petitioner: Mr.
Bhuvneshwar Tyagi, Advocate along with
petitioner
in person. For the Respondent:
Mr. Dharmendra Kumar Mishra, Ms. Anjana
Mishra and
Mr. Neeraj Deswal, Advocates for R-1
along with
respondent No.1 in person.
Mr. R.N.
Vats, Ms. Madhu Saini, Mr. A.K. Mishra,
Mr. Tanmay
Vats and Mr. Mayank Vats, Advocates
for R-2(B)
and R-3.
Mr. Pushkar Sood and Mr. Samarth Sood,
Advocates
for R-5. CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN
JUDGMENT

MANOJ JAIN, J

1. A suit was filed by Mr. Rajan Kumar Shokeen, before this Court on its original side, in the year 2007 which was registered as CS(OS) 947/2007.

2. It was directed against four defendants i.e. defendant No.1- Mr. Om Prakash Shokeen, defendant No.2-Mr. Anurag Shokeen and defendant No.3-Mr. Bal Kishan Shokeen and defendant No.4-Mr. Rajinder Singh Shokeen.

3. When the plaintiff was under cross-examination, on account of change in pecuniary jurisdiction, the suit was transferred to District Courts.

4. After such transfer, plaintiff was further cross-examined on 13.07.2016, 28.01.2017 and 04.02.2017 by learned counsel for defendant No.3-Mr. Bal Kishan Shokeen.

5. During further pendency of the matter and in terms of order passed on application moved under Order XXXII Rule 15 CPC, Mr. Jitender Kumar Shokeen was appointed as next best friend to take care of interest of defendant No.3-Mr. Bal Kishan Shokeen.

6. Cross-examination of plaintiff by the counsel for defendant No.3 was, eventually, concluded on 20.07.2019.

7. Mr. Bal Kishan Shokeen, unfortunately, died on 08.06.2021 and an application was moved seeking impleadment of his LRs, which was allowed on 16.10.2021.

8. On the basis of such application, his widow Ms. Rattan Shokeen, his two sons Mr. Jitender Kumar Shokeen and Mr. Hitender Shokeen and his two daughters Ms. Vandana Shokeen and Ms. Vaneeta Dabas were impleaded as defendants No.3(A), (B), (C), (D) and (E) respectively.

9. The present petition has been filed by defendant No.3(C)- Mr. Hitender Kumar Shokeen.

10. On 28.11.2022, plaintiff-Mr. Rajan Kumar Shokeen (PW-1) entered into witness box as he was to be further cross-examined by defendant No.4-Mr. Rajinder Singh Shokeen. He was cross-examined and discharged and it was at that stage of the case that the petitioner herein (defendant No.3(C)) requested the learned Trial Court that he may also be given an opportunity to cross-examine PW-1.

11. Such request was opposed by the plaintiff for the reason that the plaintiff had already been cross-examined by defendant No.3 during his lifetime and, therefore, his LRs cannot be allowed to cross-examine PW-1 again.

12. Learned Trial Court observed that a legal heir was under obligation to adopt the stand taken by his predecessor-in-interest and could take defence appropriate to his such character and could continue the suit from the stage when the deceased defendant had left the proceedings and since defendant No.3 had already cross-examined plaintiff on

20.07.2019, his legal heirs could not be given any such fresh indulgence.

13. Accordingly, said request of defendant No.3(C) was declined.

14. Defendant No.3(C) moved an application seeking recall of the abovesaid order dated 28.11.2022 and sought opportunity to cross-examine plaintiff and any other witness of the plaintiff and his such application has also been dismissed by the learned Trial Court on 01.07.2023.

15. Such order is under challenge.

16. The impugned order dated 01.07.2023 would indicate that the learned Trial Court reiterated its view that a legal representative of a deceased defendant merely steps into the shoes of deceased defendant and does not have any right to set up any individual case.

17. Order XXII Rule 4 CPC reads as under:-

"4. Procedure in case of death of one of several defendants or of sole defendant.

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant. (3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place. (5) Where--

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved."

18. According to the petitioner Order XXII Rule 4(2) CPC provides him with an "absolute right" to file a written statement and to re-examine the witnesses who might have been earlier cross-examined by his predecessor-in-interest.

19. Reliance is placed upon *Jagdish Chander Chatterjee v. Sri Kishan*, (1972) 2 SCC 461 in which it has been held as under:-

"The legal representative of the deceased respondent was entitled to make any defence appropriate to his character as legal representative of the deceased respondent. In other words, the heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Indeed this does not prevent the legal representative from setting up also their own

independent title, in which case there could be no objection to the court impleading them not merely as the Lrs. of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on the independent title."

20. The reliance has also been placed upon Vidyawati vs Man Mohan & Others 1995 (5) SCC 431 dated 01.05.1995 which reads as under:-

".....

It is true that when the petitioner was impleaded as a party - defendant, all right under Order 22 Rule 4(2), and defences available to the deceased defendant become available to her. In addition, if the petitioner had any independent right, title or interest in the property then she had to get herself impleaded in the suit as a party defendant in which event she could set up her own independent right, title and interest, to resist the claim made by the plaintiff or challenge the decree that may be passed in the suit. This is the view the court below has taken rightly."

21. However, such reliance seems to be without appreciating the entire factual matrix and the eventual outcome thereof.

22. In Jagdish Chander Chatterjee (supra), an eviction petition was filed by landlord on the ground of bona fide requirement under Rajasthan premises (Control of Rent and Eviction) Act, 1950. Learned Trial Court though decreed the eviction petition in favour of the landlord the First Appellate Court allowed the appeal and, resultantly, it dismissed the eviction petition. A second appeal was filed before the Rajasthan High Court and during pendency of such second appeal, the tenant died and his widow and children were brought on record as legal representatives.

23. The landlord contended before the Hon'ble High Court that the original tenant had died after filing of the appeal and, consequent to his death as a statutory tenant, his legal heirs were not entitled to any protection under the Act. His such contention was accepted and decree passed by the learned Trial Court was restored. Such legal heirs, feeling aggrieved, filed an appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court observed that there was nothing which could indicate that such legal representatives fall within the definition of tenant. It also observed that such legal representatives cannot, in their own right, claim to be tenant within the meaning of said Act and their contention could only be appropriate to their representative character and not one which was personal to the deceased and while holding that the ground of bona fide requirement by the landlord was personal to the statutory tenant and that, on his death, the same was not open to his legal representatives, the appeal was dismissed.

24. In *Vidyawati* (supra), the legal representative of deceased defendant had sought permission to file additional written statement claiming title and interest in the property in question and the learned Trial Court rejected such request seeking permission to file additional written statement. It observed that it was not open to such legal representative to assert her own individual or hostile title and if she wanted to do the same, she ought to get herself impleaded in her personal capacity or challenge decree in separate suit. Such order was upheld by the Hon'ble Supreme Court.

25. Thus, the petitioner cannot dig out any advantage from said precedents.

26. Petitioner has, nowhere, claimed that his interest was adverse to that of his father and, importantly, he has not even bothered to elaborate as to why he wanted cross-examination afresh and, therefore, his application was, rightly, rejected by the learned Trial Court.

27. Respondent relies upon Dabur India Ltd. v. Mani Kant Dang, 2022 SCC OnLine Del 2579 wherein learned Single Judge of this Court in CS(OS) No.2961/2014 vide judgment dated 23.08.2022 held that merely because a person had been impleaded as legal representative of the deceased defendant, he does not get any right to put the clock back and to file a separate written statement. The relevant observations made in para 13 to 18 of Dabur India Ltd. (supra) read as under:-

"13. The Bombay High Court in Gopaldas (supra) has taken a different view and has held that in terms of Order XXII Rule 4(2) of CPC a party who is impleaded as a legal representative of a deceased party would be entitled to make a defence, provided that the defence does not exceed the limits of the character that he holds as legal representative. It was further held that the legal heir would be entitled to file written statement notwithstanding the fact that the original defendant has omitted to file written statement. In fact, the Bombay High Court went on to hold that the legal heir would also have a right to file a written statement in addition to the written statement if that was filed by the original defendant. The judgment in Manju Parthi (supra) was distinguished on the ground that in the said suit, ex parte decree had been passed against the original defendant.

14. With the greatest respect, I am unable to subscribe with the view taken by the Bombay High Court in Gopaldas (supra). In my considered view, the

legal representatives of a defendant come into picture only as legal representatives of the deceased defendant and not in their own independent right. They cannot pitch their case higher than the original defendant. For instance, if the original defendant had chosen not to file a written statement, the legal representatives of the aforesaid defendant cannot be heard to say that they wish to file a written statement. What has to be appreciated is that legal heirs do not have any independent right as an independent party in the suit. They have only stepped into the shoes of the original defendant. Therefore, they enter into the suit at the stage where the suit is and cannot set the clock back.

15. In fact, a Single Judge of this Court in Vigro Frozen Foods (supra) has taken a view that the legal representatives cannot be permitted to set up a new case or to allow file a fresh written statement if the original defendants have already filed a written statement. This is in contrast to the view taken in Gopaldas (supra) that it is permissible for the legal representatives to file a fresh written statement in addition to the written statement filed by the original defendant.

16. While the Bombay High Court has sought to distinguish Manju Parthi (supra) on the ground that in the said case an ex parte decree was already passed against the defendant. In my view, the fact that a decree has already been passed would not make a material difference to the dicta of Manju Parthi (supra) that merely because a person is impleaded as a legal representative of the deceased defendant, he does not have the right to put the clock back and file a separate written statement. If, in a given case, one of the defendants who had not filed a written statement, passes away at the stage of evidence and his legal heirs are impleaded, the said legal heirs cannot be permitted to file a written statement at that stage and take back the suit to the stage of pleadings. Holding otherwise would lead to absurd results and endless delays in the adjudication of the suit. Therefore, I am in respectful agreement with the view expressed in Manju Parthi (supra), Ramgopal (supra), BabulalN. Shukla (supra) and KizhiakalathilPuthan (supra).

17. In the present case, the right of the defendant no. 3 to file written statement was closed on 20th November, 2015. It is an admitted position that the aforesaid order was not challenged either by the defendant no. 3 or subsequently by his legal heirs. Therefore, the said order has attained

finality. It may also be pertinent to mention that counsel for the defendant no. 3 appeared in the suit after 20th November, 2015, when the right to file written statement was closed, on 23rd November, 2015 and 30th March, 2016 while the defendant no. 3 was still alive, but never sought time to file written statement. Perhaps, the defendant no. 3 did not intend to file written statement in the present case as he had already filed an affidavit in WP(C) 10587/2009 wherein, he had specifically admitted that right, title and interest in the suit property had been conveyed in favour of the predecessor-in-interest of the plaintiff company and that he had no objection if the petition is allowed. In fact, one of the legal heirs of the defendant no. 3, Mr. Rupin Dang also filed an affidavit in the said writ petition stating that he has no objection if the writ petition filed by the predecessor-in-interest of the plaintiff company is allowed. Therefore, in my view, grave prejudice would be caused to the plaintiff if the legal heirs of the defendant no. 3, at this stage, are permitted to set the clock back and file written statement.

18. There is no merit in the present appeal and the same is dismissed."

28. Though in Dabur India Ltd. (supra), right to file written statement of defendant No.3 had already been closed during his life time and when his legal heirs were substituted, their request to file written statement was declined but the guiding principle would still remain the same.

29. Undoubtedly, in the present case, defendant No.3 was defending the matter and had even filed written statement.

30. A combined reading of Section 2(11) CPC and Order XXII Rule 4 CPC would make it clear that a legal representative would mean a person who in law represents the estate of the deceased person and against whom the right to sue also survives. Such person is, though, entitled to take any defence but it has to be appropriate to his such character and, therefore, such legal representative cannot be permitted to set the clock backwards. Herein also, the petitioner has, merely, stepped

into the shoes of deceased defendant and, therefore, he must continue with the proceedings where these were left by his predecessor-in-interest. His impleadment would not give him any unfettered right to submit written statement afresh and to even cross-examine the witnesses who have already been cross-examined and discharged. Such representative cannot assert his own hostile or a completely new stand, inconsistent with the one taken by his predecessor-in-interest.

31. In the present case, additional written statement seems to have been filed by the petitioner herein of his own on 15.11.2021 and neither the learned Trial Court had granted him any such liberty nor he had sought any such permission after his impleadment and, therefore, such additional written statement was not even taken on record. This is clearly reflected in order dated 28.11.2022 also.

32. The rule of procedure prescribed under Order XXII CPC is designed to advance justice and the interpretation has to be in accordance with such objective.

33. Viewed thus, this Court does not find any merit or substance in the present petition and same is accordingly dismissed.

34. The pending application also stands disposed of in aforesaid terms.

(MANOJ JAIN) JUDGE SEPTEMBER 12, 2025/ss/pb

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