REVISIONAL CIVIL

Before R. S. Narula, C.J.

JOGINDER SINGH ETC.,—*Petitioners*

versus

KRISHAN LAL and others,—*Respondents*

Civil Revision No. 64 of 1975

January 11, 1977.

Code of Civil Procedure (Act V of 1908)—Section 153, Order 1 Rule 10(2), Order 6 Rule 17 and Order 22 Rule 4—Limitation Act (36 of 1963)—Section 21—Some of the defendants dead before the institution of a suit—Deletion of the names of the deceased and substitution of their legal representatives—Provisions of Order 6 Rule 17—Whether can be invoked—Order 22 Rule 4—Whether applicable—Such suit—Whether a nullity—Legal representatives of such deceased impleaded—Question of limitation qua them—When to be decided.

Held, that Order 6 Rule 17 of the Code of Civil Procedure, 1908. applies to amendment of pleadings and only such amendments can be allowed as are necessary for the purpose of determining the real question in controversy "between the parties". "Parties" in the context in which the expression is used in rule 17 of Order 6 of the Code would imply only such persons who are arrayed before the court and were alive at the date of the institution of the suit or have subsequently been substituted in place of persons who were alive on such a date. The provisions of Order 6 Rule 17 of the Code cannot, therefore, be invoked by a litigant for deleting the name of a person from the array of the parties to a suit who was dead before the institution of the suit and for substituting in the place of such person the name of somebody else.

(Para 5)

Held, that the question of substitution of the legal representatives of a deceased under Order 22 Rule 4 of the Code can arise only if he was alive at the time when the suit was instituted and has died during the pendency of the suit. The case of a person who had died before the institution of the suit or the appeal and who was erroneously impleaded as a party, does not fall within the purview of Order 22 Rule 4 of the Code. (Para 6)

Held, that a suit where there are joint defendants would not be a nullity merely because one of the defendants was dead before the institution thereof. What can be done in a case of this type is to strike the name of the dead person which cannot possibly remain in the array of the parties and if the law permits to substitute for

the name of such dead person the name of any other person who is found to be the proper party to the suit in place of the dead person. Whether this is done under Order 1 Rule 10(2) which certainly appears to provide for such an eventuality or done under section 153 of the Code which obviously covers such a situation, the main question is of limitation. In such cases the trial Court must decide the question of limitation before or at the time of directing the impleading of the legal representatives of the persons, who are dead before the institution of the suit and also decide the question arising under the proviso to sub-section (1) of Section 21 of the Limitation Act 1963 if the same is invoked by any party before actually impleading any such legal representatives. (Paras 7, 8 and 9)

Petition under Section 115 of the Code of Civil Procedure for revision of the order of Shri Bhagwan Singh, Sub Judge 1st Class, Sunam, dated the 31st October, 1974, allowing the plaintiff-applicant to file the amended plaint on 8th November, 1974.

Sarwan Singh, Advocate, *for the Petitioners.*

Prem Nath Aggarwal, Advocate, *for the Respondents.*

JUDGMENT

R.S. Narula, C.J. (Oral)

(1) In order to appreciate points of law which call for decision in this petition it is necessary to survey in brief the relevant facts of this case. Krishan Lal plaintiff-respondent filed an application of redemption of the land in dispute before the Collector on December 3, 1969. The application was dismissed by the Collector on November 30, 1970. On November 30, 1971 (December 3, 1971), Krishan Lal respondent filed this suit for declaration to the effect that the order of the Collector by which his application for redemption had been rejected was improper, against law and against the provisions of the Redemption of Mortgages (Punjab) Act, 1913, and was, therefore, null and void. A further declaration was prayed to the effect that the plaintiff-respondent is entitled to redeem the land in question under section 12 of the said Act. Defendants 1 to 9 in the suit as originally filed were the mortgagees. Defendants 10 to 13 were co-mortgagors of the plaintiff-respondent. Defendant No. 5 Sant Singh and defendant No. 9 Khushal Singh were amongst the mortgagees. During the pendency of the suit it transpired that Khushal Singh had died as long ago as on May 18, 1962, and Sant Singh had died on January 26, 1966. It is the admitted case of both sides that each of the said defendants had died even

prior to the application filed by the plaintiff-respondent before the Collector. Faced with this situation the plaintiff made an application under Order 6 Rule 17 of the Code of Civil Procedure to the trial Court on August 18, 1973, for substituting the names of the legal representatives of the said two defendants on the record of the suit. In paragraph 8 of the application it was stated that the names of defendants Nos. 5 and 9 were liable to be struck out and the names of their legal representatives were entitled to be substituted for them. In paragraph 9 the names of the legal representatives (*ja-nashin*) of Sant Singh and in paragraph 10 the names of legal representatives of Khushal Singh were mentioned. The ultimate prayer in the application was contained in paragraph 14 to the effect that for the names of Sant Singh and Khushal Singh should be substituted the names of their legal representatives. The precise amendment to be made was detailed in paragraph 15 wherein it was stated that on the plaint being amended as prayed (a) the names of Sant Singh defendant No. 5 and Khushal Singh defendant No. 9 would be deleted; and (b) the names of the legal representatives of Khushal Singh named in paragraph 10 and those of Sant Singh named in paragraph 9 would be arrayed amongst other defendants in the description of parties in the plaint. As a result of the contest of the application by the defendants the trial Court on November 16, 1973, framed an issue to the effect "whether the deaths of Sant Singh and Khushal Singh were not known to the plaintiff at the time of filing of the suit, if not to what effect ?" The finding of fact recorded on the above issue by the trial Court in its order under revision is that the plaintiff respondent had no knowledge about the death of either of the two deceased defendants before the filing of the present suit. Having come to that finding the Court below has held that :—

(i) in case a suit has been filed against several defendants, one or more of whom were dead before the institution of the suit, the legal representatives of such defendants can be brought on record by seeking amendment of the plaint ;

(ii) the plea pressed by the defendants about the suit being time-barred against the legal representatives will be determined on merits in the main suit after the legal representatives of the two deceased defendants have been brought on the record; and

(iii) the plea relating to limitation does not debar the legal representatives of the deceased defendants being impleaded as defendants to the suit particularly when the effect of the impugned order of the Collector *qua* those two defendants who were dead even before the application to the Collector was made has to be determined in the suit.

On the above findings the plaintiff was allowed to file an amended plaint by a specified date.

(2) Not satisfied with and aggrieved by the above-mentioned order of the trial Court on issue No. 2 (relief), Joginder Singh etc. defendants have come to this Court. It has been contended on their behalf that notwithstanding the finding of fact recorded by the trial Court on issue No. 1 (which has not been contested before me), the trial Court could not have permitted the amendment of the plaint and the operative part of the order under revision is liable to be set aside. Mr. P. N. Aggarwal, learned counsel for the plaintiff-respondent, raised a preliminary objection to the effect that the revision petition is liable to summary dismissal as the defendant-petitioners have not impleaded defendants Nos. 14 to 17 as parties to this petition though they were necessary parties in view of the provisions of Order 34 Rule 1 of the Code the principles of which provision would apply to a petition for revision arising from a suit covered by that rule. The first question is whether the strict requirements of Order 34 Rule 1 would or would not apply to a petition for revision of an interlocutory order passed in a mortgage suit. Secondly, all that the said rule requires is that all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties "to any suit relating to the mortgage." The argument of Mr. Sarwan Singh is that the suit from which the present revision petition has arisen is a suit for declaration of the order of the Collector being null and void and does not directly relate to the mortgage. In the alternative Mr. Sarwan Singh has contended that if the Court finds that the said defendants are necessary parties to the present petition, he may be permitted to join them, in which event he would pray for condonation of delay in filing the petition against those respondents.

(3) The interest of defendants 14 to 17 is the same as that of the plaintiff-respondent, who is represented before me, as they are all co-mortgagors. Even if the suit in the trial Court is held to

relate to the mortgage in question, this Court can exempt the impleading of any party or parties to the suit whose interest is adequately represented before the Court. On the facts and circumstances of this case it appears that defendants 14 to 17 are not necessary parties to this petition. It is also doubtful if the suit from which these proceedings have arisen can be said to relate strictly to the mortgage. In a loose sense it does relate to the mortgage as the ultimate aim of the plaintiff-respondent is to have a declaration to the effect that he is entitled to redeem the mortgage under the provisions of the Act. Though he wishes to reach that target by getting a declaration to the effect that the order passed by the Collector is null and void, strictly speaking this suit is not for redemption and in that sense it may fairly be argued that the suit does not relate to the mortgage. Even if I had held in favour of the plaintiff-respondent on these two points arising out of the preliminary objection, I would have allowed the defendant-petitioners to implead the absentee defendants as parties to this petition and would have condoned the delay as the error is obviously not deliberate and there is force in the contention of the learned counsel that the error is merely typographical and accidental. It is for these reasons that I overrule the preliminary objection.

(4) On the merits of the controversy the submissions of Mr. Sarwan Singh are :—

(i) the provisions of Order 6 Rule 17 of the Code cannot be invoked for merely deleting the names of certain parties and substituting for them other names in the array of parties to a suit ;

(ii) the provisions of Order 22 Rule 4 of the Code have no application to a case where the deceased person had died before the institution of the suit itself ;

(iii) the names of the legal representatives of any defendant cannot be substituted under Order 1 Rule 10(2) of the Code if the defendant was dead before the institution of the suit as the suit against such a defendant would be a nullity. A suit filed in the name of a deceased person and a suit filed against a deceased person would be a nullity, and no question can arise of substituting the name of a living person for a dead person in such a suit ;

(iv) in an eventuality like the one that has arisen in the present case where there are more than one defendants and some of them are found to have died before the institution of the suit, amendment in the array of parties can be allowed under section 153 of the Code provided the suit against the persons to be added or substituted would be within time on the date on which the addition or substitution is made; and

(v) on the finding of fact recorded by the trial Court if the trial Court chose to allow the amendment in the array of defendants, it was bound to decide the question of limitation against the defendants sought to be merely added before allowing their addition, and the order of the trial Court postponing the decision on the question of limitation after directing the addition of the new parties is without jurisdiction, or in any case the jurisdiction exercised by the trial Court in that behalf has been exercised with material irregularity or illegality.

(5) After hearing learned counsel for the parties at length I am inclined to agree with the first contention of the learned counsel for the petitioners. Order 6 Rule 17 applies to amendment of pleadings. Only such amendments can be allowed as are necessary for the purpose of determining the real question in controversy "between the parties". "Parties" in the context in which the expression is used in rule 17 of Order 6 of the Code would imply only such persons who are arrayed before the Court and were alive at the date of the institution of the suit, or have subsequently been substituted in place of persons who were alive on such a date. The provisions of Order 6 Rule 17 of the Code cannot in my opinion be invoked by a litigant for deleting the name of a person from the array of parties to a suit who was dead before the institution of the suit and for substituting in the place of such person the name of somebody else. Counsel for the respondents has not been able to cite any case to the contrary.

(6) The second proposition canvassed by the learned counsel for the petitioners has not been seriously disputed. The judgment of the Division Bench of the Lahore High Court in *Roop Chand* v. *Sardar Khan and others* (1), on which learned counsel for the respondents has placed reliance in another connection (to be referred

(1) A.I.R. 1928 Lahore 359.

to later) is itself an authority for the proposition that the question of substituting the legal representatives of only such a person under Order 22 Rule 4 of the Code can arise who was alive at the time when the suit was instituted and has died during the pendency of the suit. It was held by the Lahore High Court that the case of a person who had died before the institution of the suit or the appeal, and who was erroneously impleaded as a party, does not fall within the purview of Order 22 of the Code. This proposition has also been followed in various subsequent decisions. I am in full agreement with this view.

(7) In support of the submission that the names of the legal representatives of a person who was dead before the institution of the suit cannot be brought on record by substitution under Order 1 Rule 10(2) of the Code, counsel has relied on the Division Bench judgment of this Court in *Amar Kaur and others* v. *Sadhu Singh and others*, (2), and on a subsequent Single Bench judgment of Pandit, J. (as he then was) in *Goverdhan Dass Sud Mal* v. *Darshan Singh and another*, (3). The judgment of the Division Bench in *Amar Kaur's case* is of no avail to the petitioners as it related to an appeal filed in the name of a dead person, which was held to be a nullity. For the same reason the decision of the Division Bench of the Mysore High Court in *C. Muttu* v. *Bharath Match Works, Sivakasi*, (4), is also not relevant. In that case the suit had been filed against a dead person who was the solitary defendant and was, therefore, held to be a nullity, and it was observed that substitution of a living person in place of a dead person could not be allowed by the amendment of the plaint in such a suit. An appeal or a suit filed by a dead person or against a solitary person who was dead before the institution thereof would indeed be a nullity, and no question of invoking Order 1 Rule 10 of the Code would arise in such an eventuality. Though there were more than one defendants in the suit from which the civil revision petition filed by Goverdhan Dass, Syed Mal, etc. arose, it is clear from the narration of facts contained in paragraph 5 of the judgment (to which my attention has been drawn by Mr. Aggarwal, learned counsel for the respondents) that for all practical purposes Guftar Mal who was dead before the institution of the suit was the sole defendant in the

(2) AIR 1961 Punjab 57.

(3) 1968 Current Law Journal (Pb. and H.) 793.

(4) AIR 1964 Mysore 293.

case as the suit related to two separate alienations in respect of each of which a separate suit could have been instituted and Guftar Mal was the sole vendee in one of those alienations, a living defendant being the vendee in case of the other alienation. The judgment of Pandit, J. in the *case of Goverdhan Dass Sud Mal* (supra) is, therefore, no authority to hold that even if there are more than one defendants in a suit and one of them alone was dead before the institution of the suit, the entire claim has to be dismissed because of the said mistake. It is to controvert the argument of Mr. Sarwan Singh on this point that Mr. Aggarwal has cited the judgment of the Division Bench of the Lahore High Court in *Roop Chand's case* (supra) to which I have already adverted. In the face of the judgment in *Roop Chand's case* and even otherwise on a further study of the proposition Mr. Sarwan Singh has now conceded that a suit where there are joint defendants would not be a nullity merely because one of the defendants was dead before the institution thereof. The main argument of the learned counsel for the petitioners on this point is that the precise provision under which an error of the type that has occurred in this case can be rectified is section 153 of the Code. That section provides that the Court may at any time and on such terms as to costs or otherwise as it may think fit amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding. Reliance for this proposition has been placed on the judgment of this Court in the case of *Goverdhan Dass Sud Mal* (supra) wherein it was held, *inter alia*, that in order to avoid multiplicity of litigation and do substantial justice between the parties, the Court can substitute the name of an heir in place of his predecessor-in-interest (who had died before the institution of the suit) under the provisions of section 153 of the Code. The emphasis of the counsel on this point is on the observations of the learned Judge in the aforesaid case to the effect that such relief can be allowed under section 153 when concededly the limitation for filing an independent suit against the person to be added would still be there. Though this proposition was conceded in the *case of Goverdhan Dass Sud Mal*, it would really depend on certain statutory provision in force at the relevant time. Whether an amendment of this type is made under the cover of Order 1 Rule 10(2) of the Code or in exercise of powers vested in the Court under section 153 would not, in my opinion, make any material difference as the course to be adopted in either of the two cases would be the same

and the relief to be granted would also not differ in any material particulars. What can be done in a case of this type is to strike out the name of the dead person which cannot possibly remain in the array of parties and if the law permits to substitute for the name of such dead person the name of any other person who is found to be the proper party to the suit in place of the dead person, whether it is done under Order 1 Rule 10(2) which certainly appears to provide for such an eventuality or done under section 153 which obviously covers such a situation, is of mere academic interest and need not detain us further.

(8) The main question which troubles the petitioners and causes apprehension in the mind of the respondents is of limitation and it is from this point of view alone that some distinction can be sought between amendment allowed in this respect under Order 1 Rule 10 or allowed under section 153. Amendments of this type were allowed under sub-rule (2) of rule 10 of Order 1 in *Bala Prasad* v. *Radhey Shiam*, (5), *Makram Ali Molla and others* v. *Abdul Hamid Molla and others* (6), and *Rangrao Vyankatesh Deshpande* v. *Kashinath Dhondu* (7), to which cases Mr. Aggarwal has invited my attention. The judgment of the Lahore High Court has also been added by Mr. Aggarwal to the same list. Sub-rule (5) of rule 10 of Order 1 of the Code states that subject to the provisions of the Indian Limitation Act, 1877, section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons. Since this provision is subject to section 22 of the Indian Limitation Act, 1877 (corresponding to section 22 of the 1908 Act and section 21 of the 1963 Act), the matter regarding limitation against the parties sought to be added and the effect of non-impleading them within limitation on the suit against the other defendants will have to be decided by the trial Court in view of the relevant provisions of the Limitation Act. The instant suit was filed after the 1963 Act came into force, and, therefore, it is section 21 of that Act which will govern the case. Section 21 reads as below :—

> "(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as

(5) AIR 1934 Allahabad 25.
(6) AIR 1927 Calcutta 880.
(7) AIR 1947 Nagpur 73.

regards him, be deemed to have been instituted when he was so made a party :

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff."

The proviso to sub-section (1) of section 21 has been added for the first time in the 1963 Act, and there was no such provision in section 22 of the 1908 Act or the 1877 Act. The resultant situation under the old Acts was that when a new defendant was substituted or added, the suit as regards him was deemed to have been instituted when he was so made a party and the Court had no discretion in the matter of treating such a party to have been there on the date of institution of the suit. The newly added proviso to section 21(1) of the 1963 Act authorises the Court to direct that the suit as regards the added party may be deemed to have been instituted on any earlier date if the Court is satisfied that the omission to include such party was due to mistake "made in good faith". There is no difference of opinion between the learned counsel for the parties before me that the trial Court has to decide the question of limitation and that on the proviso to section 21(1) being invoked the trial Court would have to dispose of that question as a whole. The only thing that remains to be decided is whether the course adopted by the trial Court by leaving the question of limitation open to be decided along with the merits of the main suit is the correct legal course to adopt or, was the trial Court bound to decide that question either before directing the legal representatives of the deceased defendants being added to the list of defendants or at the time of passing that order, and the direction of the Court leaving that question open does or does not amount to a material irregularity or illegality in the exercise of the trial Court's jurisdiction. Mr. Sarwan Singh has referred to the authoritative pronouncement of their Lordships of the Supreme Court in *Ramprasad*

Dagaduram v. *Vijayakumar Motilal Hirakhanwala and others,* (8). That case had arisen under section 22 of the Limitation Act, 1908. Reference to section 22 of the Limitation Act in the relevant part of the judgment of the Supreme Court would, therefore, have to be construed in the light of the purview of section 21 of the 1963 Act. This is what their Lordships held in that behalf :—

> "Now, sub-rule (2) of Order 1 Rule 10 permits the addition of both plaintiffs and defendants in certain circumstances. The order however was not sought to be justified under that provision and there was good reason for it. It was conceded and in my opinion rightly that in view of section 22 of the Limitation Act, the suit as regards the parties added under this sub-rule had to be deemed to have been instituted when they were added. This was also the view expressed by the High Court. Now it is not in dispute that a suit filed on the date when the three sisters were added, to enforce the mortgage would have been barred. We may add that there is authority for the view that even the addition of defendants alone may attract the bar of limitation : See *Ramdoyal* v. *Jummenjoy,* (9); *Guruvayya* v. *Dattatraya,* (10). I think that the addition of Rajkumari and Prem Kumari as defendants was of the kind considered in these cases. Therefore, it would have been futile to add any of the parties under this sub-rule. In view of the bar of limitation, such addition would not have resulted in any decree being passed and, therefore, the addition should not have been ordered. I am, however, not to be understood as holding that apart from the difficulty created by section 22 the order could have been properly passed under the sub-rule. I have the gravest doubts if it could. It is unnecessary to discuss the matter further."

(9) The doubt expressed by their Lordships about the applicability of sub-rule (2) of rule 10 of Order 1 of the Code is not of much importance in the present case as the amendment in question could admittedly be allowed in any case under section 153 of the Code. Learned counsel for the petitioners submits on the authority

(8) A.I.R. 1967 S.C. 278.
(9) (1887) I.L.R. 14 Calcutta 791.
(10) (1904) I.L.R. 28 Bombay 11.

of the Supreme Court in *Ramprasad Dagaduram's case* that no such substitution as has been allowed in the present suit should be permitted if the suit against the parties to be added would be barred by time as it would, in the language of the Supreme Court, be futile to add any such party in view of the bar of limitation. It is on account of this observation of the Supreme Court that counsel contends that the order under revision should be set aside, the trial Court should be ordered to decide the question of limitation before permitting the addition of new parties to the suit (substitution of the legal representatives of the deceased defendants), and that if the trial Court comes to a finding that the suit against them would be barred by time the prayer for substituting the legal representatives should be declined. Mr. Aggarwal has on the other hand pointed out that their Lordships of the Supreme Court have themselves taken care to observe in paragraph 19 of the judgment (A.I.R. report) as below:—

> "The Court has power to add a new plaintiff at any stage of the suit and in the absence of a statutory provision like section 22 the suit would be regarded as having been commenced by the new plaintiff at the time when it was first instituted. But the policy of section 22 is to prevent this result, and the effect of the section is that the suit must be regarded as having been instituted by the new plaintiff when he is made a party, see *Ramsebuk* v. *Ramlall Koondoo*, (11). The rigour of this law has been mitigated by the proviso to section 21(1) of the Indian Limitation Act, 1963, which enables the Court on being satisfied that the omission to include a new plaintiff or a new defendant was due to a mistake made in good faith, to direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date. Unfortunately, the proviso to section 21(1) of the Indian Limitation Act, 1963, has no application to this case, and we have no power to direct that the suit should be deemed to have been instituted on a date earlier than November 4, 1958."

Counsel contends that the emphasis laid by the Supreme Court on the proviso to sub-section (1) of section 21 of the 1963 Act and the misfortune of non-application of that proviso to the case referred

(11) (1881) I.L.R. 6 Calcutta 815.

to by their Lordships clearly indicate that the contention of Mr. Sarwan Singh would not hold good in case of a proceeding to which the Limitation Act, 1963, applies. There is some force in the contention of Mr. Aggarwal. The difference in the two situations, to which I have already adverted briefly, would be that whereas in a case covered by the 1908 Act the Court must go into the question of limitation before allowing a party to be added, the process would not be exactly the same under the 1963 Act. In the latter case, the Court would first decide the question of fact about the dead person having been impleaded by some *bona fide* mistake and then at the time of directing the representatives of the dead person being brought on record either decide the question of limitation and grant or refuse the relief by way of substitution on the basis of the decision on the question of limitation or come to a finding on the first point, and then proceed to go into the question of limitation and also deal with the prayer under the proviso if the same is invoked by any party. In either event, however, it would be futile to leave the question of limitation being decided with the main suit. The adoption of such a course may result in unnecessary waste of time and energy of both the parties as well as the time of the Court. If on the decision of a question of limitation the party cannot be added and the proviso is not invoked, the ratio of the judgment of the Supreme Court would apply straightaway. If the proviso is invoked, but the prayer therein is declined by the Court, again the situation would be the same. It is only if the suit against the newly added party is found to be within time either because of the relevant provision in the Limitation Act or because of the discretion judicially exercised by the Court under the proviso to sub-section (1) of section 21 that there would be any purpose in allowing the addition or substitution. It will be meaningless to allow the addition subject to the decision of limitation and then to waste the time, energy and money of the parties, and after recording the entire evidence on the merits of the controversy come to a decision that the suit against the newly added parties was barred by time, and no relief can be granted under the proviso and in a given case possibly come to a further conclusion that the non-impleading of the legal representatives of the dead person would result in the dismissal of the whole suit. After taking into consideration all these matters I am of the view that in a case of this type the trial Court must decide the question of limitation before or at the time of directing the impleading of the legal representatives of the persons who were dead before the institution of the suit, and

also decide the question arising under the proviso if the same is invoked by any party before actually impleading any such legal representative. Inasmuch as the Court below has not done so, that part of the order of the trial Court which is contrary to the law laid down by me above has to be set aside. Mr. Aggarwal has contended that any order passed on the question of limitation behind the back of the parties sought to be added would not be binding on them, and, therefore, the question should be decided only after they are before the Court. There is no doubt that any decision which goes against the interest of the newly added parties arrived at before their addition would not be binding on them, and can be reopened at their instance if they are so advised. That does not, however, mean that the question should be left open to be decided with the main suit. If the trial Court had directed notice to the parties sought to be added and left over the question of limitation being decided after hearing them, I would not have interfered with its decision. In the instant case, however, the trial Court has left over the question of limitation to be decided with the main suit. That course is, in my opinion, not permitted by law. Even now if the trial Court feels necessary, it may give notice of the application of the plaintiff to the legal representatives named in paragraphs 9 and 10 of the application before deciding the question of limitation.

(10) For the foregoing reasons I allow this revision petition and while not disturbing the finding of fact covered by issue No. 1 framed by the trial Court in these proceedings, set aside the order on issue No. 2 and direct the trial Court to decide the same in the light of the observations made above. The parties may appear before the trial Court on February 7, 1977.

N.K.S.

REVISIONAL CIVIL

Before R. S. Narula, C.J.

DAVINDER NATH,—*Petitioner*

versus

MADAN GOPAL, SON OF BALAK RAM,—*Respondent.*

Civil Revision No. 1009 *of* 1976

January 24, 1977.

Haryana Urban (Control of Rent and Eviction) Act (11 *of* 1973) *as amended by Haryana Urban (Control of Rent and Eviction) Amendment Act* (4 *of* 1974)—*Sections* 20-*A* (1) (*a*) *and* 24 *Proviso*—*East*