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*Before T.H.B. Chalapathi, J.*

Chamela Ram,—*Appellant*

*versus*

Balwant Singh & others,—*Respondents*

RSA No. 1112 of 1997

21st January, 1999

*Code of Civil Procedure, 1908—S. 153—Suit filed against a dead person—Legal representatives brought on record—Whether suit is nullity.*

*Held* that no doubt it is true that a suit cannot be instituted against a dead person. Such a suit filed against a dead person is a nullity. But the plaintiff on coming to know of the death of the defendant can seek amendment of the plaint under the provisions of section 153 CPC and implead the LRs of the deceased as parties to the suit if the suit is not barred when the application for amendment was made.

(Para 7)

*Specific Relief Act, 1877—Suit for specific performance—Alteration in date fixed for execution of sale—Effect of.*

*Held* that on the scrutiny of the endorsement on the agreement of sale which is marked as mark 'A', I have no manner of doubt whatsoever to hold that the date 15th November, 1987 has been altered as 15th November, 1988. This alteration has not been explained by the plaintiff. The general rule in English Law followed in India is that a party having custody or control on a document produced in evidence must explain the alteration. When it is clearly stated in the written statement that the date has been altered and when the instrument on its production appears to have been altered, it is general rule that the party offering the document in evidence must explain its appearance because every alteration in the instrument renders it suspicious. It is only reasonable that the party claiming under the document should remove the suspicion. Thus, there instrument appears to be materially altered, the law naturally casts heavy burden on the plaintiff to explain the alteration and show when it was made. Ordinarily, the party who presents the instrument which is an essential part of his case is apparently altered, must fail, from the mere infirmity or doubtful complexion

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of the instrument unless he can satisfactorily explain the existing state of the document.

(Para 16)

A. K. Mittal, Advocate, *for the appellant.*

Mahavir Sandhu, Advocate, *for respondents Nos. 1, 4 and 6.*

### JUDGMENT

*T.H.B. Chalapathi, J.*

(1) This appeal by the plaintiff is directed against the decree and judgment of the learned Additional District Judge, Yamunanagar, at Jagadhri in Civil Appeal No. 54 of 1994 dated 13th January, 1997.

(2) The plaintiff filed the suit for specific performance of an agreement of sale said to have been executed by defendant No. 1 on 29th November, 1986 for a consideration of Rs. 35,000 and received earnest money of Rs. 5000 on the same day and the balance of sale consideration was agreed to be paid before the Sub Registrar at the time of registration of sale deed which was agreed to be executed on 15th June, 1987 but the defendant failed to execute the sale deed as agreed upon. Therefore, the plaintiff filed the suit for specific performance of the agreement.

(3) The suit was original filed against Gulab Singh. It transpired that the defendant Gulab Singh died even prior to filing of the suit. Thereupon, the plaintiff impleaded his legal representatives as defendants Nos 2 to 6 in the suit.

(4) The defendants 2 to 6 admitted the execution of the agreement of sale by defendant No. 1. But they contended that the plaintiff was not ready and willing to perform his part of his contract and there is material alteration in the endorsement extending the time for performance of the contract and because of the failure of the plaintiff, the earnest money stood forfeited. The suit being filed against a dead person is not maintainable.

(5) The trial court after framing appropriate issues and on a consideration of the material on record, dismissed the suit. The appeal filed by the plaintiffs was also unsuccessful. Hence this second appeal.

(6) The learned counsel for the defendants-respondent contended that the suit having been filed against a dead person is

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nonest in the eye of law. The legal representatives cannot be brought on record under the provisions of Order 22 CPC.

(7) It is no doubt true that a suit cannot be instituted against a dead person. Such a suit filed against a dead person is a nullity. But the plaintiff on coming to know of the death of the defendant can seek amendment of the plaint under the provisions of section 153 CPC and implead the LRs of the deceased as parties to the suit if the suit is not barred when the application for amendment was made.

(8) In *Gopalkrishnaya vs. Adivi Lakshmana Rao* (1) A Full Bench of the Madras High Court held that if an appeal is presented against a person who is dead at the date of presentation, the Court may under section 153 CPC permit the cause title to be amended or may return the memorandum of appeal for amendment and representation.

(9) The same view was taken in *K Ismail v. Palayat Koppadekbal Pav Pava Amma and others* (2).

(10) In *Chatar Prasad v. Baijinath Prasad* (3), it has been held that although an appeal against a dead man is not an appeal, the same can be allowed to be amended under the provisions of Order 1 Rule 10 read with Section 153 CPC.

(11) The Lahore High Court also has taken the same view in *Mehar Singh v. Labh Singh* (4).

(12) I do not, therefore, find any force in the argument of the learned counsel for the respondents since in this case the legal representatives of the defendant have been impleaded as parties.

(13) The execution of the agreement of sale dated 29th November, 1986 was admitted by the defendants but they denied that the time for execution of the sale deed was extended upto 15th November, 1988 and that the time was fixed for completion of the transaction upto 15th June, 1987. According to the plaintiff, the vendor Gulab Singh extended the time on 15th June, 1987 upto 15th November, 1988 but according to the defendants, the endorsement on the agreement of sale was materially altered and

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(1) A.I.R. 1925 Mad. 1210.

(2) A.I.R. 1955 Mad. 644.

(3) A.I.R. 1930 All. 131.

(4) A.I.R. 1932 Lah. 305.

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the time was originally extended upto 15th November, 1987 but it was made as 15th November, 1988. The learned Additional District Judge found that there is material alteration in the date. I also had seen the document. On a close scrutiny of the endorsement on the agreement of sale, it is clear that the year was originally mentioned as 1987 but it was made as 1988. It is very clear about the change in the year from 1987 to 1988 even to the naked eye. Therefore, there cannot be any doubt that the date 15th November, 1987 was altered as 15th November, 1988. Thus, the period agreed upon for completion of the transaction was altered. This amounts to material alteration.

(14) In order to decide whether the alteration was material, it is necessary to consider whether the alteration affected the liability of either party. There can be no doubt that the alteration of the date of the document from 15th November, 1987 to 15th November, 1988 materially affected the liability of the defendant for it extended the time within which the plaintiff was entitled to sue. When it is a material alteration, it renders the document void. In this context, it is useful to refer to the decision of Privy Council in *Nathu Lal & others v. Mt Gomti Kuar & others* (5) wherein it has been observed as follows :—

“The rule relating to the effect of material alterations in a deed made after its execution, by or with the consent of any party thereto, as it prevails in English Courts applies to Indian cases and can be briefly summarised as follows :

If an alteration (by erasure, interlineation or otherwise) is made in a material part of a deed after its execution, by or with the consent of any party thereto or person entitled thereunder, but without the consent of the party or parties liable thereunder, the deed is thereby made void. The avoidance however is not *ab initio* or so as to nullify any conveyancing effect which the deed has already had : but only operates as from the time of such alteration and so as to prevent the person who has made or authorized the alteration and those claiming under him, from putting the deed in suit to enforce, against any party bound thereby who did not consent to the alteration , any

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(5) A.I.R. 1940 P.C. 160.

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obligation, covenant or promise thereby undertaken or made.

A material alteration is one which varies the rights, liabilities or legal position of the parties ascertained by the deed in its original state or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained and as such void, or may otherwise prejudice the party bound by the deed as originally executed.

The effect of making such an alteration without the consent of the party bound is exactly the same as that of cancelling the deed. The avoidance of the deed is not retrospective and does not re-vest or re-convey any estate or interest in property which passed under it. And the deed may be put in evidence to prove that such estate or interest so passed or for any other purpose than to maintain an action to enforce some agreement therein contained."

(15) The above decision of the Privy Council was quoted with approval by the Apex Court in *Loon Karan Setia v. Iban E John* (6). It is also apt to quote from Halsbury's Laws of England, 4th Edition 4th Volume at paras 459 and 460 wherein it is stated as follows :—

"Where an instrument, or if a bill the acceptance thereon, is materially altered without the assent of all the parties liable on it, the instrument is avoided as regards all the parties except any one who has himself made, authorised or assented to the alteration, and those who have become parties to the instrument subsequent to the material alteration.

The following alterations are specifically declared to be material : any alteration of (1) the date ; (2) the sum payable; (3) the time of payment ; (4) the place of payment, or the addition of a place of payment where one is mentioned by the acceptor, without the acceptor's consent."

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(6) A.I.R. 1977 S.C. 336.

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(16) On the above discussion and on the scrutiny of the endorsement on the agreement of sale which is marked as mark 'A' I have no manner of doubt whatsoever to hold that the date 15th November, 1987 has been altered as 15th November, 1988. This alteration has not been explained by the plaintiff. The general rule in English Law followed in India is that a party having custody or control on a document produced in evidence must explain the alteration. When it is clearly stated in the written statement that the date has been altered and when the instrument on its production appears to have been altered, it is a general rule that the party offering the document in evidence must explain its appearance because every alteration in the instrument renders it suspicious. It is only reasonable that the party claiming under the document should remove the suspicion. Thus, there instrument appears to be materially altered, the law naturally casts heavy burden on the plaintiff to explain the alteration and show when it was made. Ordinarily, the party who presents the instrument which is an essential part of his case is apparently altered, must fail, from the mere infirmity or doubtful complexion of the instrument unless he can satisfactorily explain the existing state of the document. The plaintiff is only relying on the statement of the scribe that he made alteration. There is no evidence to show that the alteration was made in the presence of the executant and with his consent. In the absence of any acceptable evidence in this regard, the plaintiff who seeks enforcement of the agreement of sale, must fail as the onus was on him to show that the material alteration was made either with the consent of the parties or in order to effectuate the common intention of the parties. On a consideration of the entire evidence on record and on a close scrutiny of the document, the only irresistible conclusion is that endorsement on the agreement of sale was materially altered so as to appear that the date was extended upto 15th November, 1988 though endorsement as originally made clearly shows that it was intended to be extended upto 15th November, 1987. The suit of the plaintiff must fail. In the view I am taking, it is not necessary for me to go into the question whether the plaintiff is ready and willing to perform his part of the contract.

(17) In this view of the matter, I do not find any grounds warranting interference with the decrees and judgments of the Courts below. This appeal, therefore, fails and is accordingly dismissed.

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S.C.K.