

**SUPREME COURT OF INDIA**

Babu Sukhram Singh

Vs.

Ram Dular Singh

C.A.No.287 of 1966

(K. S. Hegde, A. N. Grover and H. R. Khanna, JJ.)

14.10.1971

**JUDGEMENT**

**HEGDE, J.:-**

1. This is a plaintiff's appeal. In the suit he asked for a permanent injunction against the 39 defendants therein directing them to demolish the construction in dispute on the land mentioned in Item (B) of the plaint, within the time fixed by the Court. He further sought a direction from the Court against all the defendants to fill up the pits and nalahs on the land mentioned in Item (B) of the plaint. In the alternative, he wanted the work in question to be done through the Court Amin at the cost of the defendants. The second prayer made by him is for a decree for possession of the disputed lands against all the defendants. The third prayer made in the plaint is for a decree in a sum of Rupees 1000/- against all the defendants as damages. He also prayed for a decree for costs against all the defendants.

2. The trial Court dismissed the suit in its entirety. The first appellate Court partly allowed the appeal and decreed the suit in part against all the defendants. On a further appeal being taken to the

High Court the High Court allowed the appeal of the defendants and dismissed the suit. As against the judgment of the High Court the plaintiff-appellant brought this appeal. During the pendency of this appeal defendants Nos. 12, 15, 22 and 37 died. Their legal representatives were not brought on record within the time prescribed. Thereafter the plaintiff applied to this Court for setting aside the abatement and impleading the legal representatives of the deceased respondents. But that application was dismissed.

3. Now the question is whether the appeal has abated or not. As seen earlier in the plaint a joint claim is made against all the defendants. The first appellate Court, as mentioned earlier, decreed the suit in part against all the defendants. The High Court has dismissed the suit against all the defendants. In this Court relief asked for was against all the defendants. No separate claim was made against any of the defendants. Under these circumstances, quite clearly the appeal has abated as a whole under Order XXII, Rule 4 of the Civil Procedure Code. The appeal is accordingly dismissed. No costs.

Appeal dismissed.