

# SUPREME COURT OF INDIA

Matindu Prakash

Vs.

Bachan Singh

C.A.No.1151 of 1968

(R. S. Sarkaria and S. Murtaza Fazl Ali, JJ.)

22.01.1976

## JUDGEMENT

### **FAZAL ALI, J.:-**

1. This is a defendant's appeal by certificate granted by the Punjab and Haryana High Court by order dated the 12th July 1967. The plaintiffs had filed a suit for declaration and ejectment, which was in the first instance dismissed by the trial Court but on appeal the judgment was reversed and the suit was decreed by the District Judge. Thereafter, the defendant went up in second appeal to the High Court which was heard by a single Judge who reversed the decision of the District Judge and dismissed the suit. The plaintiffs-respondents then filed an appeal under the Letters Patent before a Division Bench of the High Court which reversed the judgment of the single Judge and decreed the plaintiffs' suit. Therefore, the defendants moved the High Court for granting a certificate of fitness as the value of the subject-matter was Rs.20,000 or more. The High Court having found that the value of the subject-matter was not less than Rs.20,000 granted the certificate of fitness. It may be mentioned here that while the appeal was pending before the High Court according to the appellants, two of the appellants in the Letters Patent appeal in the High Court, namely, Kartar Singh and Arjan Singh died on the 10th June, 1960 and 20th March, 1961, respectively, and despite this the appellants did not take any steps to bring the heirs and legal representatives of those

appellants on the record. The defendants unsuccessfully tried to file a review petition before the High Court, raising this question, and ultimately they filed an application before the Division Bench of the High Court for permitting them to raise this ground in the application given before the High Court for grant of the certificate of fitness for appeal to this Court, and this prayer was allowed. The assertion by the appellants was made in the presence of the respondents who do not appear to have contested this fact either before the High Court or even in this Court in their statement of case. The appellants have clearly averred in their statement of case in the present appeal that the appeal before the Division Bench abated as the heirs of the deceased Kartar Singh and Arjan Singh (Plaintiffs-appellants before the High Court) had not been brought on the record and the respondents in their statement of case have merely taken stand that the appeal does not abate as a whole. In the circumstances, therefore, it is clear that the fact that Kartar Singh and Arjan Singh died during the pendency of the Letters Patent Appeal before the Division Bench is not disputed by the respondents. The question whether the appeal abates as a whole so as to entail a dismissal of the entire suit is a matter which can be gone into after a perusal of the nature of the pleadings, the relief granted by the court and other materials on the record. As the High Court has not gone into this question we would allow this appeal, set aside the judgment of the High Court (of the Letters Patent Bench) and remit the Letters Patent appeal to the High Court to record a finding and decide whether by virtue of the deceased appellants before it the Letters Patent appeal abated as a whole resulting in the dismissal of the appeal itself or the appeal had abated qua the deceased appellants before it and dispose of the appeal in accordance with law. There will be no order as to costs.

Appeal allowed.