

Bhag Singh and Others

Vs

Major Daljit Singh and Others

Civil Appeal No. 1593 of 1973

(B. C. Ray, S. Natarajan JJ)

25.02.1987

JUDGMENT

1. After hearing the learned counsel for both the parties in extenso, we are inclined on a consideration of the facts and circumstances of this case to condone the delay, as in our opinion sufficient cause has been made out for the delay in filing the appeal. The facts are as follows;
2. The property belonged to one Jagdev Singh who sold the said land to Bhag Singh and Ajit Singh sons of Uttam Singh, Inder Singh and Uttam Singh for a consideration of Rs. 23,000 on the basis of a sale deed dated July 4, 1960. In the sale deed one of the sons of the vendor has also signed as a vendor, that is, Daljit Singh. Subsequently thereafter, the younger son of the vendor who did not sign in the sale deed instituted the instant action for a declaration that the said sale deed has not affected his share in the ancestral property and for a declaration that the land in question was ancestral land qua to him and the sale was made without consideration and legal necessity and as such it would not affect his reversionary rights after the death of the vendor Jagdev Singh. The trial court decreed the suit holding that besides Rs. 4000 there was no legal necessity for the sale of the ancestral property. Against that the defendants preferred an appeal. The first appeal having failed the dependents came up with the instant appeal before the High Court. During the pendency of the appeal one of the appellants Inder Singh, who had purchased 1/8 share of the property died on March 20, 1972. No application having been made either by the other appellants or by the legal representatives of deceased Inder Singh within a period of 90 days this suit abated on June 20, 1972. It was on August 7, 1972 that Zora Singh son of the deceased made an application for condonation of delay under Section 5 of the Limitation Act for bringing the legal representatives on the file after setting aside abatement. This application is, of course, within 60 days from the date of abatement. In the application under Section 5 it has been stated on affidavit by Zora Singh that he did not know that this second appeal was pending in the High Court in which his father Inder Singh was the appellant. He further stated that his two sisters were married and they did not know about this appeal and that he and his brother did not know about this appeal. It was also stated that Uttam Singh, one of the other appellants consulted Kedar Nath Tiwari, advocate at Chandigarh and on August 3, 1972 he came to know of this appeal in which his father was the appellant. He came to know from Uttam Singh about the pendency of this appeal on August 4, and immediately thereafter on August 5, 1972 the instant application was made for bringing on record the legal representatives of the deceased after setting aside the abatement. This application was dismissed by the High Court on the ground that Uttam Singh, one of the appellants, was, the real brother of Inder Singh and the other two appellants 1 and 2, that is, Bhag Singh and Ajit Singh who are the sons of Uttam Singh are the nephews of Inder Singh deceased had knowledge that Inder Singh was the appellant; but they did not make any application within the period of limitation to bring the legal representatives on the file. It has also been observed by the High Court that no affidavit was filed on behalf of the

widow of the deceased and the other son and two daughters that they had no knowledge about the appeal filed by Inder Singh since deceased. The statements made by the applicant Zora Singh regarding his knowledge on August 4, 1972 was vague and it was further mentioned that one Mr. Harbans Lal Sarin, is the Senior Advocate regarding this appeal and it is not known how he approached and consulted Mr. Kedar Nath Tiwari, advocate regarding this appeal. On these grounds the High Court held that there was no sufficient cause made out for condonation of the delay in making this application for bringing on record the legal representatives of the deceased Inder Singh. We have considered the entire facts and circumstances of the case. The law is now well settled by several decisions which have been cited before us, Prem Nath, v. M/s Kandoomal Rikhiram [AIR 1962 Punj 446] and Hanuman Dass v. Pirthivi Nath [AIR 1956 All 677] as well as of this Court reported in Union of India v. Ram Charan [AIR 1964 SC 215] that the court while considering an application under Section 5 of the Limitation Act will consider the facts and circumstances not for taking too strict and pedantic stand which will cause injustice but to consider it from the point of taking a view which will advance the cause of justice. In this case admittedly the appellants are agriculturists living in villages and the applicant is also a very young person having little knowledge about the steps that are to be taken. Moreover, he has clearly stated that he came to know of the pendency of the appeal filed by his father as one of the appellants only recently that is on August 4, 1972 and the application was made on August 5, 1972. Considering all these facts and circumstances we feel that for the ends of justice and fair play the application under Section 5 of the Limitation Act should be allowed as in our opinion sufficient cause has been made out for the delay in filing the application for bringing on record the legal representatives of the deceased Inder Singh. Of course, we also think it just and proper that the applicant must pay to the respondent a sum of Rs. 500 in cash as costs. The appeal is thus allowed. The judgment of the High Court is set aside and the matter is remanded to the High Court for decision on merits. The payment is to be made within two weeks from the date the record reaches the High Court. Let the record be sent immediately.

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