

Leelabai (Smt)

Vs

Rajaram and Another

Civil Appeal No. 8679 of 1997

(M. M. Punchhi, M. Srinivasan JJ)

12.12.1997

JUDGMENT

1. Leave granted.

2. A minor's property was sold through his father as guardian. The father in reverse acting again as guardian filed a suit on behalf of the minor against the vendee for return of the property propounding a different nature as to the transaction. The suit was dismissed. An appeal was taken before the lower appellate court. While the appeal was pending, the minor died. The estate of the minor devolved under the Hindu Succession Act, 1956 on his mother. The mother never came forward to get herself impleaded as heir and legal representative of the minor. The father kept pursuing the appeal on behalf of the minor as if nothing had happened. The lower appellate court allowed the appeal. The High Court confirmed the order on subsequent appeal. The short and narrow point now is whether on account of the death of the minor the appeal remained competent before the lower appellate court.

3. The legal position is clear. The plaintiff in the suit was the minor. He had sued taking aid of his father as next friend. On the death of the minor, the need of the next friend vanished. The next friend could not thenceforth act as guardian of the minor. The estate of the minor was decidedly heritable. Under the Hindu Succession Act, 1956, the mother of a Hindu male is a Class I heir. The estate of the minor thus fell in the hands of his mother by succession. His mother had remained silent as to the litigation. It thus logically followed that the appeal before the lower appellate court became incompetent and incapable of being pursued. The power of the Court to go on with the appeal got withdrawn by the supervening event of the death of the minor. We therefore take the view that the judgment and decree passed by the lower appellate court as confirmed by the High Court was not in accordance with law. Both deserve to be set aside. The High Court has erroneously observed that the father was a natural heir. Noticeably, the father nowhere figures as Class I heir under the Hindu Succession Act. He as an heir falls in Class II. His turn comes only when no one is available in Class I. On this understanding of the position, we allow this appeal, set aside the judgment and decree of the High Court as also that of the lower court dismissing the plaintiff's suit but with no order as to costs.