

Jagdish Prasad and Others

Vs

Sukh Ram

Civil Appeal No. 3575 of 1998

(S. C. Agarwal, B. N. Kirpal JJ)

31.07.1998

ORDER

1. An application has been filed for bringing on record the legal representatives of deceased Gulabi Devi, Petitioner 2. The said application shows that Gulabi Devi died on 7-2-1997 when the matter was pending in the High Court. Since Gulabi Devi died when the matter was pending before the High Court, the application for bringing on record her legal representatives is not maintainable in this Court. The names of Petitioners 2(a) to 2(p) in the special leave petition are directed to be deleted from the array of parties. The failure to bring on record the legal representatives of Gulabi Devi is of no consequence since Gulabi Devi had been impleaded as the legal representative of Hari Ram, one of the plaintiffs, and the estate of Hari Ram is represented by Petitioners 1 and 3, the other legal representatives of Hari Ram.

2. Special leave granted.

3. The parties are the descendants of a common ancestor. The plaintiffs filed a suit for partition wherein the trial court passed a decree dividing the property equally between the two branches. Feeling dissatisfied with the said decree of the trial court, the plaintiffs filed an appeal (Civil First Appeal No. 134 of 1986) before the High Court of Rajasthan, Jaipur Bench, Jaipur. The defendant-respondents also filed a cross-appeal (Civil First Appeal No. 49 of 1986) against the decree of the trial court. The appellants had engaged Shri R. P. Goyal as their counsel to represent them in both the appeals. After the death of Shri R. P. Goyal in May 1989, the appellants engaged Shri P. C. Jain, Advocate to represent them in both the matters. Shri P. C. Jain filed his Vakalatnama in Civil First Appeal No. 134 of 1986. Civil First Appeal No. 134 of 1986 came up for hearing before the High Court on 18-7-1989, but since Shri Jain was not present in the Court when the matter was called, Civil First Appeal No. 134 of 1986 was dismissed for default. The said appeal was, however, subsequently restored on 20-12-1989. The other appeal (Civil First Appeal No. 49 of 1986) filed by the defendant-respondents came up for bearing before the High Court on 21-7-1989 on which date, in the absence of the counsel for the appellants, the said appeal was decided ex parte against them. The appellants submitted an application for setting aside the said ex parte order dated 21-7-1989 in Civil First Appeal No. 49 of 1986. The said application was dismissed by the learned Single Judge by order dated 19-1-1990 on the view that there was no Vakalatnama in favour of Shri P. C. Jain, Advocate in respect of Civil First Appeal No. 49 of 1986 and he had no authority to represent the appellants herein. Special appeal filed against the said order of the learned Single Judge was dismissed by the Division Bench of the High Court by the impugned judgment dated 23-4-1997. The learned Judges on the Division Bench of the High Court have agreed with the view taken by the learned Single Judge that since there was no Vakalatnama in favour of Shri P. C. Jain in Civil First Appeal No. 49 of 1986, he could not appear for the appellants herein in the said case and, therefore,

he could not move the application for setting aside the ex parte decree passed in the said appeal.

4. We have heard Shri S. K. Jain, the learned counsel for the appellants. Nobody has entered appearance on behalf of the respondents even though duly served.

5. Shri S. K. Jain has relied upon Rule 437 of the Rules of the High Court of Judicature for Rajasthan, 1952 (hereinafter referred to as "the Rules") which reads as under :

"437. No fresh Vakalatnama in cross-appeals and cross-objection. - In cross-appeal, an Advocate, who has already filed a Vakalatnama for the appellant, shall not be required to file another Vakalatnama for his client as respondent in the cross-appeal.

Similarly Vakalatnama filed by counsel for the appellant in the appeal and by counsel for the respondent in cross-objections will cover both the appeal and the cross-objections."

6. The submission of Shri S. K. Jain is that where cross-appeals are filed in the High Court against a judgment, a separate Vakalatnama is not required to be filed in the cross-appeal and that the Vakalatnama filed on behalf of the appellant in the main appeal is treated as appearance on behalf of the respondent in the cross-appeal. It is urged that since Shri P. C. Jain had filed Vakalatnama on behalf of the appellants in Civil First Appeal No. 134 of 1986 filed by the appellants, the said Vakalatnama should be treated as authority for Shri P. C. Jain to appear on behalf of the appellants in the cross-appeal, i.e., Civil First Appeal No. 49 of 1986.

7. The Division Bench of the High Court has held that Rule 437 does not lend any assistance to the appellants in the present case because on 21-7-1989 when Civil First Appeal No. 49 of 1986 was decided ex parte against the respondents (appellants in Civil First Appeal No. 134 of 1986) the other appeal had already been disposed of and the Vakalatnama in that appeal could not be treated as an authority for Shri P. C. Jain to appear in Civil First Appeal No. 49 of 1986. In taking the said view, the High Court, in our opinion, has not given effect to the object underlying Rule 437 of the Rules. The said Rule postulates that where a cross-appeal has been filed against the same judgment, separate Vakalatnama is not required to be filed on behalf of the respondent in the cross-appeal if the said party is the appellant in the appeal filed against the said judgment and Vakalatnama has been filed in that appeal. Shri P. C. Jain had filed his Vakalatnama in Civil First Appeal No. 134 of 1986. The fact that the said appeal had been dismissed for default on 18-7-1989 would not mean that the authority which was given to Shri P. C. Jain to represent the appellants as respondents in Civil First Appeal No. 49 of 1986 had ceased to be operative. The High Court was, therefore, in error in not considering the application for setting aside the ex parte decree filed by the appellants in Civil First Appeal No. 49 of 1986 on the ground that Shri P. C. Jain had no authority to appear in that matter and to seek setting aside the ex parte decree passed against the appellants in that appeal. The appeal is, therefore, allowed, the impugned judgment of the Division Bench of the High Court dated 23-4-1997 as well as the order of the learned Single Judge dated 19-1-1990 are set aside. The application for setting aside the ex parte decree dated 21-7-1989 passed in Civil First Appeal No. 49 of 1986 is allowed and the said ex parte decree passed in the said appeal is set aside. Civil First Appeal No. 49 of 1986 is remitted to the High Court for consideration. It may be heard along with Civil First Appeal No. 134 of 1986 which is said to be pending in the High Court. No order as to costs.