

Gajraj

Vs

Sudha and Others

Civil Appeal No. 309 of 1999

(Venkataswami, R. P. Sethi JJ)

22.01.1999

ORDER

1. Leave granted.
2. Heard counsel on both sides.
3. In an application under Order 22 Rule 5, the trial court had rightly appreciated the facts and passed an appropriate order. The high Court on revision without appreciating the scope of the application observed that the proposed legal representatives can take up all other defences arising from their individual rights.
4. Aggrieved by the said observation, the appellant has filed this appeal by way of special leave petition.
5. After perusing the orders of the trial court and of the High Court, we are of the view that on the facts of this case, the High Court was not right in observing that the proposed legal representatives can take up all other defences arising from their individual rights. The reason is that the respondents on more than one occasion moved applications under Order 1 Rule 10 CPC raising contention to agitate their individual rights and those applications were dismissed. The trial court observed thus :

"The scope of an enquiry under Section 22 Rule 5 of the CPC is very limited. Moreover, this is a suit between landlord and tenant. The plea taken by the proposed LRs is inconsistent with the plea taken by the deceased Vasantrao. They must proceed with the litigation from the stage where the death of Defendant 1 had taken place. They are bound by the pleadings of their predecessor in whose place they are not to be substituted. A legal representative substituted cannot set up a new or individual right. He cannot take up a new and inconsistent plea contrary to the one taken up by the deceased. The proposed LRs stand in the shoes of the deceased defendant and must accept their position adopted by their predecessor. Besides this, the plea of right in the property by birth in the ancestral property and the male representative are the coparceners was taken by the proposed LRs by moving applications Exhs. 114, 119 and 174 under Order 1 Rules 10 of the CPC. The applications Exhs. 114 and 119 were rejected by my learned predecessor by passing a common order dated 13-2-1992 and Exh. 174 was rejected on 8-3-1994 by my learned predecessor. LRs before the Hon'ble High Court in civil revision and thereafter review petition. Thus, the said issue has become final and cannot be reargued by the present LRs."

6. In view of the findings recorded by the trial court that the legal representatives on earlier occasions moved the court under Order 1 Rule 10 but failed, the order of the High Court cannot be sustained and, therefore, is set aside and the order of the trial court is restored. The appeal is allowed.