

Badni

Vs

Siri Chand

Civil Appeal No. 1131 of 1981

(K. Venkataswami, A.P. Misra JJ

15.02.1999

JUDGMENT

A.P. Misra J

1. In all these appeals, the common question that arises for consideration is whether the High Court of Punjab and Haryana was right in dismissing the Regular Second Appeals as abated on account of the death of one of the appellants.

2. Brief facts leading to the filing of these appeals are as under :-

The first respondent herein (herein deceased), second respondent and the husband of the third respondent (hereinafter referred to as the 'Plaintiff-respondents' for convenience) filed eight suits for possession of the suit land by way of redemption in the Court of Sub-Judge, 1st Class, Palwal, District Gurgaon. The appellants contested the suits, contending inter alia, that the plaintiff-respondents were not the successors-in-interest of the deceased Durga Devi, to whom the suit land originally belonged. It was claimed by the plaintiff-respondents that their father, Charan Singh, was adopted by one Rattan Singh, who was, admittedly, entitled to succeed along with the appellants on the death of Durga Devi. The adoption was disputed by the contesting defendants (appellants herein) in the suits. However, the Trial Court as well as the Appellate Court held that the adoption was true and binding on the defendants. As a matter of fact, the Trial court decreed two suits out of eight suits and dismissed the other six suits. The reasons for dismissal need not detain us. Against the dismissal of six suits, the plaintiffs-respondents preferred six appeals before the District Judge, Gurgaon, and the learned District Judge allowed their appeals. Against the judgment of the learned District Judge, the aforesaid R.S.As. were preferred.

3. As pointed out earlier, the High Court dismissed the appeals on the ground that the legal representatives of one Shiv Lal, one of the appellants before it, was not brought on record and, therefore, the appeal filed by Shiv Lal stood abated. As a result of abatement of Shiv Lal's appeal, according to the High Court, the other appeals also stood abated. Because of the common issue regarding the adoption of plaintiff's predecessor-in-interest, there cannot be two conflicting decrees. In other words, the adoption issue was common and decisive in all the appeals pending before the High Court and dismissing one appeal alone on the ground of abatement and allowing the other appeals to proceed on merits might end in conflicting decrees in case the other appeals are accepted on merits.

4. Mr. Nambiar, learned senior counsel for the appellants, submitted that the High Court was not right in dismissing the connected appeals on the ground that the legal representatives of one of the deceased appellants in one R.S.A. were not brought on record. According to the learned counsel, the decision of the High Court was against the provision of Order 22 Rule 4 of the Code of Civil Procedure. In support thereof, he placed reliance on a judgment of this Court in *Balwant Singh and Anr. etc. v. Daulat Singh (dead) by L.Rs. and others*, JT 1997(5) S.C. 703.

5. On the other hand learned counsel appearing for the respondents submitted that the High Court was right in holding that on account of a common issue in all the appeals the death of one of the appellants in one R.S.A. resulting in abatement of that appeal, will also result in abatement of other appeals. In support of his contention, he placed reliance on two judgments of this Court in *State of Punjab v. Nathu Ram*, A.I.R. 1962 SC 89 and *Sri Chand and others v. M/s Jagdish Prashad Kishan Chand and others*, A.I.R. 1966 SC 1427.

6. We have considered the rival submissions and we are of the view that the High Court was right in coming to the conclusion that the decree was based on a common issue against the appellants in all the six R.S.As. and the failure to bring the legal representatives of one of the deceased appellants in one R.S.A. will result in abatement of other appeals. Otherwise, there will be conflicting decrees in the event of other R.S.As. being allowed on merits, which cannot be allowed.

7. We have noticed earlier that the common issue for consideration in all the appeals before the High Court was whether the claim of the plaintiff-respondents for possession of the suit land on the basis of adoption was sustainable. The Courts below having found the adoption in favour of the plaintiffs, the consequence will be that the issue of adoption in respect of Shiv Lal's appeal would become final in that R.S.A., resulting in the abatement of that R.S.A. as well as other R.S. Appeals to avoid conflicting decrees.

8. This Court in Nathu Ram's case (supra) laid down the following test :-

"The test to determine this has been described in diverse forms. Courts will not proceed with an appeal: (a) when the success of the appeal may lead to the Court's coming to a decision which be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the Court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the Court and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective, that is to say, it could not be successfully executed."

9. In Sri Chand's case (supra), this Court again reiterated the same view by observing as follows :-

"Counsel for the first respondent contended that the appeal had abated in its entirety because the heirs of Basant Lal had not been brought on record, and the ground on which the judgment of the High Court proceeded was common to all the sureties. In our view, this objection must be upheld. The appeal of Basant Lal has abated since the legal representatives to his estate have not been impleaded, and the record of the appeal is defective. That is not denied by the appellants. But it is urged that this Court is competent to set aside an order of the High Court in its entirety on the

ground that it is not sustainable in law and in any event to set aside the order insofar as it affects the claim of appellants 1 and 3 and the third respondent. Support was sought to be derived for the first contention from O.41 R.4 of the Code of Civil Procedure and it was urged that even if the decree be assumed to have proceeded on a ground common to all the sureties, it is open to any one or more of the sureties to appeal from the order and the appellate Court may reverse or vary the decree in favour of all the sureties. This plea stands refuted by the judgment of this Court in *Rameshwar Prasad v. Shambhari Lal Jagannath*, A.I.R. 1963 SC 1901. It was held by this Court in Rameshwar Prasad's case, A.I.R. 1963 SC 1901 that an appellate Court has no power to proceed with an appeal and to reverse and vary the decree in favour of all the plaintiffs or defendants under O.41 R.4 when the decree proceeds on a ground common to all the plaintiffs or defendants, if all the plaintiffs or the defendants appeal from the decree and any of them dies and the appeal abates so far as he is concerned."

10. In the light of the decisions of this Court and in view of the facts of these cases, there cannot be any doubt that the High Court was perfectly right in dismissing all the appeals as abated.

11. The decision cited by the learned counsel for the appellants is distinguishable on facts. In that case, the Court has given a finding of fact that the decree was divisible. Therefore, that judgment will have no application to the facts of the present cases.

12. In the circumstances, the appeals fail and are accordingly dismissed with no order as to costs.

13. In view of the above, all the I.As. will stand disposed of accordingly.