

**SUPREME COURT OF INDIA**

Om Prakash Marwaha (D) Thr. Lrs.

Vs.

Jagdish Lal Marwaha (D) Thr. Lrs

C.A.No.6850-6851 of 2008

(Altamas Kabir and Markandey Katju JJ.)

26.11./2008

**JUDGMENT**

**Altamas Kabir, J.**

1. Leave granted in both the Special Leave Petitions wherein the parties are the same and both arise out of orders passed by the Delhi High Court in RSA No.126 of 1989.

2. The appellants herein are the legal representatives of the original defendant, Nanak Chand in a suit brought against him by Jagdish Lal Marwaha, the predecessor-in-interest of the respondents, to makeover vacant and peaceful possession of quarter No. 37-38, Block No.C-I, Malkaganj, Delhi, and, thereafter, not to interfere with the plaintiff's possession therein. On the suit being dismissed, the plaintiff, Jagdish Lal Marwaha, filed a First Appeal in the Court of Additional District Judge. While the First Appeal was pending, Nanak Chand died on 3<sup>rd</sup> January, 1985, and apparently an application for substitution of his legal heirs was made in the pending appeal. The said application, however, remained pending and undisposed of, though the appeal was finally decided. Consequently, although, an application had been made for substitution, the heirs of deceased, Nanak Chand, were not brought on record in the first appeal and as a result when the decree was drawn up it was drawn up against Nanak Chand, who, as mentioned hereinabove had died during the pendency of the appeal.

3. Although, no formal order of substitution had been made, the legal representatives of Nanak Chand filed a second appeal before the High Court, which was ultimately dismissed on 12<sup>th</sup> December, 1991, with the judgment and decree of the First Appellate Court being affirmed. However, since the legal heirs of deceased Nanak Chand had not been brought on the records of the first appeal, a decree in terms of the judgment passed by the High Court in the Regular Second Appeal could not be drawn up and as a result, the decree passed by the First Appellate Court and affirmed by the High Court in second appeal could not be executed. An application, being CM 2873 of 1998, was thereupon filed by the legal heirs of the plaintiff decree-holder in the second appeal praying for rectification of the judgment and

decree drawn up by the First Appellate Court or in the alternative to draw-up a fresh decree in the second appeal in terms of the order dated 12th December, 1991, dismissing the appeal.

4. The aforesaid application was strongly opposed on behalf of the respondents on the ground of maintainability. It was alleged that the applicants had no locus standi to file an application, as they were not the legal representatives of the plaintiff, Jagdish Lal Marwaha.

5. The aforesaid submission did not find favour with the High Court since by an order dated 23rd January, 2004, they had been substituted in place of the original plaintiff, Jagdish Lal Marwaha as his legal representatives. Furthermore, when the appeal was dismissed on 12th December, 1991, they were parties to the appeal. The application was, therefore, allowed with a direction upon the Registry of the High Court to draw up the decree in the second appeal mentioning the names of the parties of the appeal at the time the same was finally disposed of. The said order is the subject matter of challenge in SLP(C) No.3856 of 2007, which is being heard along with SLP(C) No. 7099-7100 of 2008.

6. At this juncture, it may be stated that two applications, being CM Nos.584 and 585 of 2003, were filed by the legal representatives of Jagdish Lal Marwaha, the plaintiff in the suit, for bringing them on record as the legal representatives of the deceased plaintiff and for condonation of delay in making the application. It was sought to be explained that since an application had already been made under Order 22 Rule 3 read with Section 151 of the Code of Civil Procedure, on which no order had been passed, the applicants had been advised that they were not required to file a separate application for the same purpose. Accepting the explanation, the Delhi High Court allowed both the applications and directed the Memo of Parties to be amended accordingly. SLP(C) Nos. 7099-7100 of 2008 was filed against the said order of the High Court.

7. Appearing for the appellants, Mr.Hasnain, learned advocate, urged that once the second appeal had been disposed of, it was no longer open to the High Court to entertain the several applications filed on behalf of the plaintiffs/respondents to allow the heirs of the deceased-plaintiff to rectify the cause-title of the said appeal. Mr.Hasnain submitted that when the first appeal filed by the plaintiff had been allowed and the judgment of dismissal of the suit had been reversed, and, thereafter, confirmed in second appeal and the review therefrom had been dismissed, it was no longer within the jurisdiction of the High Court to allow the decree of the first appeal to be amended when the same had been drawn up against a dead man.

8. Mr.Hasnain submitted that the procedure adopted by the High Court was not in consonance with law and legal procedures and the orders impugned therein were, therefore, liable to be set aside.

9. Appearing for the respondents, Mr. Iyer, learned senior advocate, submitted that undoubtedly the suit filed by the predecessor-in-interest of the respondent was decreed in the First Appeal. The said decree was also confirmed by the High Court in Second Appeal. Learned counsel submitted that apart from the above, an application had been duly made by the plaintiff for substitution of the deceased defendant, but through inadvertence no order had

been passed thereupon and the decree came to be drawn up against Nanak Chand, who had died.

10. Mr. Iyer submitted that since the default leading to the passing of the decree against a dead person was not wholly on account of any negligence on the part of the plaintiff or his legal heirs, they should not be made to suffer on account of such technicality and there was, therefore, no reason for this Court to intervene in the matter under Article 136 of the Constitution.

11. In support of his submission, Mr. Iyer firstly referred to a decision of a Three-Judge Bench of this Court in *Jang Singh vs. Brij Lal*<sup>1</sup>, wherein this Court was called upon to consider whether a litigant should suffer on account of the lapse made by an officer of the Court. Applying the well known maxim, *actus curiae neminem gravabit* – that an act of Court should do no harm to a litigant, this Court held that the mistake should be rectified by the Court and the parties relegated to the position on the date when the mistake occurred. Mr. Iyer also referred to the decision of this Court in *N. Suriyakala vs. A. Mohandoss*<sup>2</sup>, where, in considering the scope and object of Article 136 of the Constitution, it was explained that the same was a residual provision which enabled this Court to interfere with the judgment and order of any Court or Tribunal in India in its discretion. Laying emphasis on the phrase "in its discretion", this Court held that jurisdiction under Article 136 was meant to deal with important issues and to deal with important questions relating to the Constitution or the law or where grave injustice had been done.

12. Mr. Iyer submitted that this was not a case which called for any interference by this Court under Article 136 of the Constitution.

13. Having carefully considered the submissions made on behalf of the respective parties, we are also inclined to hold that the facts of this case do not warrant any interference with the orders impugned in these two appeals. Admittedly, the original defendant, Nanak Chand, had died during the pendency of the First Appeal, but it is equally important that an application for substitution of his legal heirs had been made though no order has been passed thereupon and a decree was consequently drawn up against the original defendant who had already expired. The legal heirs of the plaintiff had brought the fact of the death of the sole defendant to the notice of the Court, but it is through sheer inadvertence that the substitution was not effected. However, in the Second Appeal, the legal representatives of the original plaintiff, Jagdish Lal Marwaha, were made parties by the heirs of the deceased defendant, Nanak Chand, who are the appellants herein. The heirs of both the plaintiffs and the defendants were, therefore, duly represented before the High Court in the Second Appeal and it is essentially a technicality which has prevented the heirs of the plaintiff from enjoying the benefits of the decree passed in favour of the plaintiff.

14. We are convinced that this is a fit case where applying the above-mentioned maxim, this Court should not interfere with the orders passed by the High Court.

15. We, accordingly, dismiss both the appeals but without any orders as to costs.

<sup>1</sup>[AIR 1966 SC 1631]

<sup>2</sup>[2007 (9) SCC 1960]