

# ORISSA HIGH COURT

Cuttack Municipality

Vs

Shyamsundar

Civil Revn. Nos.358 and 360 of 1975

(P.K. Mohanti, J.)

07.09.1976

## ORDER

### **P.K. Mohanti, J.**

1. Both the Civil Revisions have been heard together and will be disposed of by this common judgment as they raise a common question of law and fact.
2. The short point for decision in both the cases is whether a suit filed against a sole defendant who had died prior to the institution of the suit is a nullity and whether the plaintiff will be allowed to add the legal representatives of the deceased defendant under the provisions of Order 1, Rule 10, Civil Procedure Code.
3. The Cuttack Municipality filed S. C. C. Suit No. 106 of 1974 against one Chintamoni Behera and S. C. C. Suit No. 107 of 1974 against one Kartik Chandra Mitra for recovery of the arrears of municipal taxes. The process-servers who were entrusted with the service of the suit summonses reported that the defendants in both the suits had died long prior to the institution of the suits. Then the plaintiff applied in both the suits for substitution of the legal representatives of the deceased defendants. The learned S. C. C. Judge rejected the applications for substitution and held that the suits had abated. Aggrieved by this order the plaintiff has preferred these Civil Revisions. It is urged on behalf of the petitioner that the learned S. C. C. Judge ought to have allowed the applications for substitution even though the suit had been filed against dead persons.
4. The facts in the present suits were exactly similar to the facts in the case reported in (*C. Muttu v. Bharath Match Works, Sivakasi<sup>1</sup>*). The petitioner in that case filed a suit against one P. K. Periaswamy Nadar on 31-7-58 for recovery of money. Subsequently, it was found that P. K. Periaswamy Nadar, the defendant had died on 1-6-58, that is, long prior to the date of institution of the suit. The petitioner made an application under Order 22, Rule 4 and Section 151 of the Civil Procedure Code on 19-9-58 and prayed for permission to amend the plaint by deleting the name of P.K. Periaswamy Nadar and substituting his legal representatives. The trial court allowed the application and permitted the plaint to be amended. On a review of the decisions of the several High Courts, a Division Bench of the Mysore High Court held that where a suit is

filed against a dead person, a court has no jurisdiction to grant an application under Order 1, Rule 10 or under Order 22, Rule 4 and 9 or do any other act authorized by the Civil Procedure Code, as the suit filed against a dead person is a nullity. Their Lordships clearly laid down that no substitution can be permitted in a case where there was a sole defendant, but where there are more defendants than one and one of them was dead when the suit was filed, the legal representatives of the deceased defendant can be brought on record subject to any question of limitation that may be raised by the legal representatives of the deceased person who were brought on record as the suit had been validly presented in so far as the living defendants are concerned.

5. In (*Sisir Kumar Tarafdar v. Manindra Kumar Biswas*<sup>2</sup>) a Division Bench of the Calcutta High Court observed as follows (at p. 682):-

"It must therefore be held that the power given to the court under sub rule (2) of Rule 10 of Order 1, of the Civil Procedure Code to add a party contemplates only those cases where there is somebody else as plaintiff or defendant and the effect of bringing on record another person as plaintiff or defendant would be really a case of "addition" of plaintiff or defendant. A case of mere substitution as distinct from addition is not contemplated in sub rule (2)."

6. In (*Hira Lal Patni v. Kali Nath*<sup>3</sup>) the Court indicated (at p. 200):

"The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject-matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it."

7. On the authorities cited above, it is clear that a suit filed against a dead person is a nullity and that no substitution can be made in place of the original defendant who was dead on the date of the institution of the suit. The learned S. C. C. Judge was, therefore, justified in rejecting the petitions for substitution filed in both the suits.

8. In the result, both the Civil Revisions are dismissed, but in the circumstances without any order as to costs.  
Revision dismissed.

Cases Referred.

<sup>1</sup> AIR 1964 Mys 293

<sup>2</sup> AIR 1958 Cal 681

<sup>3</sup> AIR 1962 SC 199