

# PUNJAB AND HARYANA HIGH COURT

Punjab State

Vs

Sardar Atma Singh

(D Mahajan, C.J. P.C Pandit, J.)

24.05.1962

## JUDGMENT

### **P.C. Pandit, J.**

1. This is an appeal filed by the State against the award given by the learned District Judge, Patiala, on a reference under Section 18 of the Land Acquisition Act made by the Collector at the instance of Atma Singh, whose land measuring 43 bighas 11 1/2 biswas comprised in khasra Nos. 27, 28, 29 and 549/5 in village Lehal had been acquired by the Pepsu Government for construction, of a Multi-purpose Higher Secondary School. Compensation at the rate of Rs. 2/- per square yard had been awarded by the Collector and the learned District Judge had enhanced it to Rs. 3/- per square yard for khasra Nos. 27, 28 and 29 and Rs. 3/4/- per square yard for khasra No. 549/5. Atma Singh was claiming Rs. 4/8/- per square yard for khasra Nos. 27, 28 and 29 and Rs. 5/- per square yard for Khasra No. 549/5.

2. The State in this appeal claimed that the compensation allowed by the learned District Judge should be reduced to Rs. 2/- per square yard for the entire land, as given by the Collector, while Atma Singh in his cross, appeal (Regular First Appeal No. 280 of 1957) has claimed Rs. 4/- per square yard for khasra Nos. 27, 28 and 29 and Rs. 4/6/- per square yard for khasra No. 549/5.

3. A preliminary objection has been raised by the learned counsel for the respondent that this appeal has abated, because the respondent, Atma Singh, died on 8-2-1959 and no application for bringing his legal representative on the record has been filed up-till today. Learned counsel for the State submitted that since the legal representative of Atma Singh had been brought on the record in the cross-appeal filed by him (Regular First Appeal No. 280 of 1957), this appeal could not abate. For this us placed his reliance on a Privy Council decision in *Brij Indar Singh v. Kanshi Ram*<sup>1</sup>, wherein it was held—

"The introduction of a plaintiff or a defendant for one stage of a suit is an introduction for all stages, even if it be made on an appeal from a mere interlocutory order."

This decision was considered in *Shankaranaraina Saralaya v. Laxmi Hengsu*, AIR 1931 Mad 277, where the learned Judge observed as under:

"There remains the decision of the Privy Council reported in ILR 45 Cal 94 : (AIR 1917 PC 156). In that case, when an order on an interlocutory application passed during the course of a suit was made the subject of an appeal or revision in the appellate Court and when the legal representative of the original plaintiff was brought on record in the appellate Court as the death of the plaintiff occurred during the pendency of the matter before, the appellate Court, it was held that when the suit had to be tried again by the first Court after the disposal of that appeal, no fresh application, to bring in the legal representatives of the deceased plaintiff was necessary. Their Lordships have held that the introduction of a plaintiff or a defendant for one stage of a suit is an introduction for all stages. When the subject-matter of the interlocutory application was pending in the appellate Court, it was deemed to be one stage of the suit and, therefore, there was no need to put in a fresh application at a further stage of the suit when it came on for trial before the first Court. Can it be said in the present case that what was done in one appeal could enure for the benefit of another appeal unless the latter appeal can be deemed to be a continuation or a further stage of the appeal in which the legal representatives were brought on record? I am constrained to say that it is difficult to extend the principle of the decision of the Privy Council to the facts of this case."

After discussing the various authorities, the learned Judge came to the conclusion that—

"Where two appeals are independently filed and arise out of the same suit and where one is filed by the plaintiff in the original suit and the other by the defendant and where the appeal by the defendant-appellant has abated as he has not added the legal representative of the deceased respondent in time, the defendant-appellant cannot claim the benefit of the fact that the legal representative of the deceased appellant in the appeal filed by the plaintiff-

appellant has been added within time, and, therefore, say that it should be taken that those legal representatives have also been added in place of the deceased respondent in his appeal. The analogy of an appeal and memorandum of cross-objections in the same appeal does not, held good. In the present case and hence the abatement cannot be set aside."

This appeal, consequently, abates and is dismissed. There will, however, be no order as to costs.

D. K. Mahajan, J.

4. I agree.