

RAJASTHAN HIGH COURT

L.Rs of Late Johoor Ahmed

Vs.

L.R. of Late Laloo

S.B. Civil Revision Petition No. 1017 of 2003

(PrakashTatia, J.)

14.09.2004

JUDGMENT

PrakashTatia, J.

1. Heard learned counsel for the parties.
2. Nobody appeared on behalf of the non-petitioner despite service.
3. It appears from the facts of the case that in the plaintiff's case, judgment was delivered by the Trial Court on 29th July, 1994. In the night of 29th July, 1994, the sole plaintiff died. The decree-sheet was prepared on 30th July, 1994. When the execution petition was submitted by the petitioner- legal representative of the plaintiff, the executing court summoned the file of Civil Original Suit No. 158/85. The executing court held that the plaintiff died on the day when the judgment was pronounced, which is a day before the decree-sheet was drawn. The executing court further held that the defendant died on 28th April, 1994, long before the judgment and decree and his legal representatives were not brought on record, therefore, the judgment dated 29th July, 1994 and decree dated 30th July, 2004 are nullity.
4. Learned counsel for the petitioner submits that the plaintiff died in the night of 29th July, 1994 after the pronouncement of the judgment and, therefore, the suit had not abated on this count. It is also submitted that court below without holding any enquiry about the date of death of the defendant declared the decree as nullity. It is further stated that the defendant was very much alive after 28th April, 1994 and until and unless the objector proves that he died before the date of the decree, the decree cannot be declared nullity.
5. So far as the death of the plaintiff after delivery of the judgment is concerned, it

cannot abate the suit in any manner. As per the Rule 6 of Order 22 C.P.C., the suit cannot abate in case where any of the party dies after the conclusion of the hearing and before pronouncement of the judgment. Since, the court below itself held that the plaintiff died on the date of the judgment and the arguments heard a day prior to the pronouncement of the judgment, therefore, death of plaintiff after pronouncement of judgment is of no consequence in this case. Even if fact of death of any party after hearing of the suit but before the pronouncement of the judgment would have been brought to the notice of the court, even then the court could not have postponed the pronouncement of the judgment on this ground. Rule 6 of Order 22 C.P.C. is required to read as court should not postpone the pronouncement of the judgment on account of death of any party to suit after conclusion of hearing of the suit.

6. In the facts of this case, the Trial Court below failed to notice that Rule 7 of Order 20, which provides that in all cases date of judgment shall be the date of decree irrespective of the fact that decree-sheet was drawn on any future date because sub-rule (2) of Rule 6A of Order 20 C.P.C. (after amended of Civil Procedure Code, sub-rule (1) of Rule 6A of Order 20 C.P.C.) permits signing of the decree on future date. Rule 7 of Order 20 C.P.C. provides two things; one what should be the date of decree and second is signing of decree by the judge. Rule 7 of Order 20 says that decree shall bear the date on which the judgment was pronounced. Rule 6A of Order 20 permits court to sign the decree on future date but as per second part of Rule 7 of Order 20, judge is required to sign the decree after satisfaction that decree has been drawn up in accordance with the judgment. The date of signing of the decree by judge of the court in such situation may be different from the date of judgment, but that date cannot be treated as date of the decree and date of decree cannot be different from the date of judgment. Even if, the decree sheet contains date of decree different than the date of judgment, decree's date is required to be taken same as of date of the judgment only.

7. It appears that the court below was impressed by the fact that the plaintiff died on 29th July, 1994, the day on which the judgment was pronounced but before signing of the decree, which was signed on 30th July, 1994, but again failed to notice that as per sub-clause (b) of sub-rule (2) of Rule 6A of Order 20 (new sub-rule (2) of Rule 6A of Order 20 C.P.C.), till decree is drawn the last part of the judgment or copy of the judgment made available to the party itself is decree till actual decree is signed. Therefore, it cannot be said that the decree was passed or even drawn only on 30th July, 1994. Meaning thereby the suit stands decided on the day when the judgment is pronounced and not when the decree-sheet was signed by the court. Therefore, the

court below should have treated the date of judgment as date of decree though decree-sheet was drawn on other date from the date of judgment. Hence, the decree cannot be said to be nullity because of the death of the plaintiff in this case.

8. So far as the allegation of the death of the defendant on 28th April, 1994 is concerned, it should have been determined by the Trial Court by giving opportunity to prove the fact and opportunity to the legal representatives of the plaintiff to disprove the fact. The same has not been done, therefore, the order dated 8th July, 2003 deserves to be set aside.

9. In view of the above, the revision petition of the petitioner is allowed. The order dated 8th July, 2003 is set aside. The matter is remanded back to the executing court to decide the issue whether the defendant died on 28th April, 1994 or before 29th July, 1994 and if the defendant died before 29th July, 1994, what is the effect on the decree ?

Petition allowed.