

Premananda S.X. Verencar and ors. Vs. Vilas Nakul Bale and ors.

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Court : Mumbai

Decided On : Mar-23-1990

Reported in : 1991(1)BomCR244

Judge : Sharad Manohar, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151

Appeal No. : Civil Revision Application No. 48 of 1989

Appellant : Premananda S.X. Verencar and ors.

Respondent : Vilas Nakul Bale and ors.

Advocate for Def. : S.D. Lotlikar, Adv. for the respondent Nos. 1, 2, 3, 4, 6, 8, 9, 12, 13, 14, 15, 16, 17, 18 and 20, ;A.V. Nigalye, Adv. for the respondent No. 7

Advocate for Pet/Ap. : R.G. Ranim, Adv.

Judgement :

Sharad Manohar, J.

1. The point raised in this Revision Application stems from the desire to indulge in technicalities.
2. The plaintiff, who is the petitioner before the Court, filed a suit for certain reliefs against the defendant who filed a counter-claim along with the Written Statement. The plaintiff No. 1 died. The other plaintiffs brought the heirs of the plaintiff No. 1 on record. Evidently, the plaintiff No. 1 in the suit was one of the defendants in the counter-claim of the defendant. It appears that the defendant, or his advocate, or probably his clerk, was not sufficiently quick-footed for the task of bringing the heirs of the plaintiff No. 1, who was the defendant No. 1 in the counter-claim, on record and the counter-claim was slept over.
3. In these circumstances, the plaintiff moved the Court for dismissal of the counter-claim on the ground that the same had abated. The trial Court examined the position, found that the counter-claim had abated because, admittedly, the heirs of the defendant No. 1 were not brought on record but decided not to ignore the requirements of justice. In its inherent jurisdiction, therefore, it set aside the abatement and ordered that the heirs of the plaintiff No. 1 who were already on record in the plaintiff's suit should be shown as the heirs of the deceased defendant No. 1 in the counter-claim, and the suit and the counter-claim were ordered to proceed for trail.

The present Revision Application is filed by the plaintiff in the suit against the said order.

4. In my opinion, the order passed by the learned Judge is in complete consonance with every principle of justice contemplated under section 151 of the Civil Procedure Code. We must bear in mind that the days when the Courts believed that everyone was for himself and the devil for the hindmost are gone by. The Courts

have sometimes to take the parental position. The dispute is one and the same, whether you call it a suit or a counter-claim. The heirs of the plaintiff No. 1 are already on record in the suit. Really speaking, the statutory provision itself should be such that there is no necessity of bringing the same deceased party's heirs on record in the companion proceedings. But the position remains that the statutory law, as it stands, requires the counter-claim to be treated as a suit, and hence, all the provisions of Order XXII of the Code apply to such counter-claim. But that does not mean that the Court is divested of its jurisdiction under section 151 of the Code. It is evident that this is precisely what was borne in mind by the learned trial Judge and he has taken the right step for giving substantial justice.

5. This Court's jurisdiction under section 115 of the Code is a discretionary jurisdiction. It is not meant for perpetuating injustice brought about by technicalities. The petition, therefore, fails. The rule is hereby discharged. However, there should be no order as to costs.

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