

Singri Vs. Doddiah and anr.

Singri Vs. Doddiah and anr.

SooperKanoon Citation : sooperkanoon.com/371051

Court : Karnataka

Decided On : Dec-04-1952

Reported in : AIR1954Kant32; AIR1954Mys32; ILR1953KAR544;
(1954)32MysLJ82

Judge : Mallappa, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 146 - Order 9, Rule 13

Appeal No. : Civil Revn. Petn. No. 74 of 1952-53

Appellant : Singri

Respondent : Doddiah and anr.

Advocate for Def. : D. Srinivasaiya, Adv.

Advocate for Pet/Ap. : B.V. Rama Rao, Adv.

Judgement :

ORDER

1. This is a revision petition against the order passed by the Judge, Court of Small Causes, Bangalore, in Mis. No. 231/49-50. An ex parte decree was obtained against the deceased father of the petitioner in S. C. 1335 of 1948-49, and after the death of father the petitioner has filed an application under Order 9, Rule 13, C. P. C. for setting aside the ex parte decree. Petitioner is a minor and his mother

is her next friend. The petitioner's contention is that the petitioner's mother came to know of the decree only when a notice was served on her in the Execution Case on 22-2-1950. The learned Subordinate Judge (Court of Small Causes) has rightly come to the conclusion that the service on the petitioner's father was not sufficient and that the petitioner's guardian came to know of the petition within thirty days from the date on which the application to set aside the ex parte decree was filed. But he has dismissed the petition on the ground that an application by a legal representative of a deceased defendant against whom an ex parte decree has been passed cannot be filled under Order 9, Rule 13, C. P. C. It is not clear why it is so. Section 146. Civil P. C. is as follows:

'Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken on application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.'

It is clear that, as stated in the section, it is a case where an application could have been made by the deceased father of the defendant and as such, the Section authorises the petitioner who is claiming under him to make the application which could have been filled by his deceased father. If any authority is needed, I may refer to the decision in -- 'Mst. Deoki v. Jugal Kishore' , in which it is held that:

'An application under Order 9, Rule 13 is not exempted from the general provision relating to procedure contained in Section 146. A legal representative can therefore file an application to set aside an ex parte decree before he is actually brought on the record.'

2. This revision petition is, therefore, allowed. The ex parte decree passed against the deceased father of the petitioner is set aside; and the small cause case will be taken on file and proceeded with bringing the petitioner as the legal representative of the deceased defendant.

3. Revision allowed.