

**Meka Chinnappa Reddy and Another Vs. Meka Pulla Reddy**

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**SooperKanoon Citation :** [sooperkanoon.com/438356](http://sooperkanoon.com/438356)

**Court :** Andhra Pradesh

**Decided On :** Jun-26-2000

**Reported in :** 2000(4)ALD492; 2000(4)ALT562

**Judge :** Vaman Rao, J

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 22, Rules 1, 2 and 3

**Appeal No. :** CRP No. 3960 of 1997

**Appellant :** Meka Chinnappa Reddy and Another

**Respondent :** Meka Pulla Reddy

**Advocate for Def. :** Mr. O. Manohar Reddy, Adv.

**Advocate for Pet/Ap. :** Mr. M.V. Suresh, Adv.

**Judgement :**

ORDER

1. Heard both sides.

2, This civil revision petition is directed against the order dated 26-8-1999 passed in IA No.822 of 1998 in OS No.170 of 1986 on the file of the Principal Junior Civil Judge, Kadiri under which a petition filed on behalf of the defendants (petitionersherein) in the suit praying for dismissal of the suit as a whole as having abated on the ground that one of the plaintiff's died was dismissed.

3. The facts in nutshell necessary for the purpose of this petition may be stated as follows :

Plaintiffs 1 and 2 filed the suit for perpetual injunction restraining the defendants from interfering with the possession and enjoyment of the plaintiffs over the suit property. Evidently, the plaintiffs claim that they are in joint possession of the suit properties. The defendants set up a plea that they are the joint-owners of the property and disputed the claim of the plaintiffs. During the pendency of the proceedings, the plaintiff No.2 died and no steps were taken for bringing legal representatives of plaintiff No.2 on record. The trial Court had recorded on 4-12-1997 that the suit in respect of plaintiff No.2 has abated. Subsequently, a petition for setting aside the abatement and for bringing legal representatives of plaintiff No.2 on record with a petition under Section 5 of the Limitation Act for condoning the delay was filed. That petition was dismissed.

4. It is under these circumstances, the defendants made an application contending that considering the nature of the suit, abatement of the suit in respect of plaintiff No.2 must entail the abatement of the entire suit and prayed for dismissal of the suit as having abated. This petition was dismissed by the learned Principal Junior Civil Judge, Kadiri.

5. The contention of the learned Counsel for the petitioners-defendants, Sri M.V. Suresh, is that the suit being for perpetual injunction, abatement of the suit in respect of plaintiff No.2 must necessarily mean abatement of the suit in respect of plaintiff No.1 also. The learned Counsel for the respondent on the other hand contends that plaintiffs 1 and 2 filed the suit claiming to be the co-owners of the suit land and sought relief of perpetual injunction and as such after the death of plaintiff No.2, the right to sue survives in favour of plaintiff No.1 and as such according to the learned Counsel for the respondent, the trial Court rightly held that the suit as a whole cannot be dismissed as having abated.

6. The question for consideration is: whether in the light of the above contentions, the suit shall be deemed to have abated in entirety?

7. The relevant provisions applicable to the case are Order 22, Rules 1 and 2 of CPC, which are extracted below:

'1. No abatement by party's death, if right to sue survives :--The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives :--Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.'

8. Under Order 22, Rule 1 of CPC, the suit shall not abate on the death of plaintiff or defendant if the right to sue survives. Rule 2 of Order 22 of CPC postulates that where there are more than one plaintiff or defendant, on the death of a plaintiff or a defendant if the right to sue survives to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, this fact shall be recorded and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs or against the surviving defendant or defendants.

9. In a case where Order 22, Rule 2 of CPC applies and on the death of one of the plaintiffs right to sue survives to the surviving plaintiff alone, then notwithstanding the fact that no steps have been taken under Order 22, Rule 3 of CPC for bringing the legal representatives of the deceased plaintiff on record, the suit can proceed on behalf of the surviving plaintiff. The necessity to bring the legal representatives of a deceased-plaintiff on record as contemplated under Order 22, Rule 3 of CPC, on pain of abatement of suit as a whole would arise where the right to sue does not survive to the surviving plaintiff alone.

10. Thus, the crucial question in such cases is whether considering the nature of the suit including the nature of the right in the property, nature of infringement of right of the plaintiff alleged and the nature of the relief claimed, under the circumstances of a particular case, right to sue can be said to survive on the death

of plaintiff in favour of surviving plaintiff alone within the meaning of Order 22, Rule 2 of CPC or whether such a right to sue does not survive against the surviving plaintiff alone and whether on failure to bring on record the legal representatives of the deceased plaintiff under Order 22, Rule 3(1) of CPC, the suit abates as contemplated under sub-rule (2) of Rule 3 of Order 22 of CPC.

11. Similarly, on the death of one of several defendants, if the right to sue survives against the surviving defendant or defendants alone, the suit can proceed against the surviving defendant or defendants notwithstanding fact that the legal representatives of the deceased defendant have not been brought on record as contemplated under Order 22, Rule 4 (1) of CPC. However, where right to sue does not survive against the surviving defendant or defendants alone and where the deceased defendant's legal representatives have not been brought on record within the time prescribed, the suit shall abate against the deceased defendant as contemplated under Order 22, Rule 4 (3) of CPC.

12. The learned Counsel for the petitioners contends that in this case, the suit shall be deemed to have abated in its entirety as plaintiff No. 1 and the deceased plaintiff No.2 claim the suit property as joint owners. The learned Counsel for the petitioners relies on the judgment of a Division Bench of this Court in the case of Mohd. Safdar Shareef (died) Per LRs. v. Mohammed Ali (Died) per LRs., : 1993(1)ALT522 (DB).

13. It is necessary to note the facts in that case (supra). It was a suit seeking a common decree for possession and mesne profits against all the defendants. The trial Court dismissed the suit. The plaintiffs filed appeal. However, during the pendency of appeal, the 2nd respondent-defendant died. The appellate Court allowed the appeal setting aside the decree of the trial Court without impleading the legal representatives of the 2nd respondent. In the Letters Patent Appeal filed against this judgment, the Division Bench held that it was a common decree for possession and mesne profits against all the defendants and therefore the decree in question is joint and indivisible. Therefore, it was held that any decree that may be passed against some of the defendants would be inconsistent with the decree of dismissal of suit in respect of other defendants and therefore, the appeal before

the learned single Judge had abated.

14. This case does not advance the case of the petitioners herein. It may be pointed out that in the case before the Division Bench (supra), the defendants claimed joint possession in respect of the suit land. It was held by the Division Bench that as the interest of the 2nd respondent in the appeal was indivisible from that of the others, the judgment rendered in appeal was a nullity. It is on this count, it was held that the suit as a whole has abated.

15. The facts of the case before me would disclose that plaintiffs 1 and 2 claiming to be the co-owners, filed the suit against the defendants for perpetual injunction on the ground that they were interfering with the plaintiffs possession. As rightly noted by the learned Principal Junior Civil Judge, the present plaintiff as a co-owner could have instituted the suit for perpetual injunction even without joining the deceased plaintiff who is a co-owner. The acts alleged against the defendants are that they have been interfering with the possession of the plaintiffs without any right.

16. The death of the 2nd plaintiff does not effect the right of the surviving plaintiff to protect his possession over the suit property by seeking to restrain the defendants from interfering with his possession over the suit property by filing the suit. The plaintiff, who is in possession of property, has a right to protect his possession and seek injunction against the defendants, who seek to interfere with his possession. This right in no way is dependent on or diluted by the fact that the surviving plaintiff was in possession of the property in question as a co-owner along with the deceased plaintiff. The obligation of the defendants not to interfere with the possession of the surviving plaintiff over the suit property is in no way affected or obliterated by the mere fact that the deceased plaintiff was also in joint possession along with the surviving plaintiff over the suit property. If several co-owners are in possession of the property, every co-owner has an independent and a parallel right to protect his possession over the suit property and to sue against the potential trespassers. This right is not contingent or conditional on its simultaneous or conjoint exercise by all the co-owners. In view of this, it has to be held that in a suit for injunction filed by co-owners to protect their possession, in

the event of death of one of the plaintiffs, the right to sue survives to the surviving plaintiff or plaintiffs.

17. In the case of Johan Uraon (Ekka) and Anr v. Sitaram Sao, : AIR1964 Pat31 , a Division Bench of Patna High Court held that a- suit by one of the joint owners to obtain possession by ejecting a trespasser was maintainable even through the other joint owners are not impleaded as parties to the action. It was thus held that when one of the plaintiffs who are joint owners dies, the right to suit in fact survives to the other plaintiffs or the other appellants or respondents as the case may be and in such a case, there is no question of abatement of the entire appeal. This applies with greater force in the case of a suit for perpetual injunction.

18. The learned Counsel for the petitioners relies on the judgment of the Supreme Court in the case of Bandi v. Siri Chand, : AIR 1999 SC1077 , in support of his contention. In this case, the plaintiffs set up a claim to the suit properties on the basis of being the off springs of the adopted son of an admitted heir of the original owner of the suit land. The plaintiffs filed suits for possession of suit lands by way of redemption. Suits were decreed in the first appeal. Defendants filed second appeals which were dismissed by the High Court for the reason that legal representatives of one of the appellants were not brought on record. The finding that the suits abated in their entirety was based on the fact that common issue in all the appeals was whether the claim as to adoption was sustainable. In view of these facts, the Supreme Court held that the High Court rightly dismissed all the appeals as having abated to avoid conflicting decisions on the common issues.

19. The principle underlying the judgment of the Supreme Court has no bearing on the facts of the case before me. It may be mentioned here that in this case before me, (here is no question of any conflicting judgments. The dismissal of the suit in respect of the deceased plaintiff No.2 would only mean that there would be no injunction in respect of possession of the deceased plaintiff concerned. Even in the absence of any injunction in respect of one of the co-plaintiffs, the other co-owner can claim the relief of injunction to protect his possession over the property.

20. The learned counsel for the petitioners relies on another Division Bench Judgment of this Court in the case of State of Hyderabad v. Mohammad Ajzal, :

AIR 1968 AP47 . In this case, the matter related to land acquisition. The subject matter of land was held by several persons as joint owners. One of the joint owners was not made a party to the proceedings. Under these circumstances, it was held that one of the joint owners not being made a party or not being a party by reason of any abatement or ceasing to be a party due to death, the amount of compensation awarded would be considered to be different to that which would have been given had all the parties owning the land been before the Court. It was thus held that in the absence of any one of them, the appeal itself would not be properly framed. On this basis, it was held that the appeal as a whole abated.

Thus, this case also is distinguishable on facts from the instant case before me.

21. In the case of Sahdeo Singh v. Ramchhabila Singh, : AIR1978 Pat258 , the Patna High Court has held that where during the pendency of a suit by co-owners for declaration of title and possession against the trespassers, one of the co-owners died, the suit will not abate for non-substitution of the legal representatives for the reason that the suit is maintainable even by some of the co-owners. This case applies on all fours to the facts of this case.

22. In view of what has been discussed above, it is apparent that the suit of the surviving plaintiff for the relief of perpetual injunction cannot be said to have abated on the ground that the legal representatives of the deceased plaintiff were not brought on record. The right to sue for perpetual injunction certainly survives against the surviving plaintiff alone in this case even without bringing the legal representatives of the deceased plaintiff on record.

23. Under these circumstances, there is no infirmity in the order passed by the learned Junior Civil Judge, Kadiri. In the result, this civil revision petition is dismissed.No costs.