

Debi Din Vs. Chunna Lal

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1888)ILR10All264

Judge : John Edge, Kt., C.J., ;Straight, ;Brodhurst, ;Tyrrell and ;Mahmood, JJ.

Appellant : Debi Din

Respondent : Chunna Lal

Judgement :

John Edge, Kt., C.J.

1. This is an application on behalf of the plaintiff-appellant to bring upon the record the representative of the deceased defendant-respondent. The defendant-respondent died on the 4th January 1888. This application was presented to the Court on the 19th March last. Mr. Ross also applied, on behalf of the legal representative of the deceased defendant-respondent, for an order directing that the appeal should abate. The question raised is whether Article 171B of Schedule ii of the Limitation Act applies to this case. It has been decided in the case of Balkrishna Gopal v. Bal Joshi Sadashiv Joshi I. L. R., 10 Bom., 663, that Article 171B, sch. ii, of the Limitation Act does not apply to the case of a defendant-respondent. Having regard to the fact that by art. 171 the Legislature provided, specifically for the cases of the death of an appellant or the death of a plaintiff, and there is no express reference in art. 171B to the death of a respondent, I am of

opinion that art. 171B does not apply to the death of the respondent, whether that respondent was originally in the action plaintiff or defendant. I think the principle applicable to this case is the same principle which was the basis of my brother Straight's judgment in the Full Bench case of Narain Das v. Lajja Ram, I.L.R., 7 All., 693, with which, so far as the report enables us to see, at least two Judges of the Court concurred. This opinion of mine is in conflict with the judgment of Oldfield and Tyrrell, JJ., in Baldeo v. Bismillah Begam, I.L.R., 9 All., 118. It does not appear to me that Oldfield, J., who delivered judgment in that case, considered or discussed the bearing of the judgment of the majority of the Court in the Full Bench case of Narain Das v. Lajja Ram I. L. R., 7 All., 693. Indeed, my brother Tyrrell is now of opinion that that judgment was in opposition to the decision of the majority in the Full Bench case. My opinion is also apparently at variance with the decision of Oldfield and Mahmood, JJ., in Rameshar Singh v. Bisheshar Singh I. L. R., 7 All., 734. I think I am bound to follow the principle which is enunciated in the Full Bench case and with which principle I agree. As in my opinion art. 171B does not apply, and as there does not appear to be any other article than 178 applicable to the case, I am of opinion that the application of Mr. Conlan on behalf of the appellant must be allowed and the application of Mr. Ross on behalf of the legal representatives of the deceased-respondent should be refused with costs.

Straight, J.

2. I am of the same opinion. The learned Chief Justice has correctly interpreted the principle upon which I based my decision in the Full Bench case of Narain Das v. Lajja Ram I. L. R., 7 All., 693. To put it shortly, that principle is this, that the word 'defendant' in the art. 171B does not include a 'respondent,' and that consequently the period of limitation provided in that article is not applicable to the failure on the part of the appellant to bring on the record the heir of a deceased 'respondent.' I am of opinion that the limitation applicable to cases of this kind is that which has been stated in a Full Bench case of the Madras High Court, I.L.R., 9 Mad., 1, and has, as I understand it, been approved by the Calcutta High Court, I.L.R., 12 Cal., 520, has also, from what we see now, met with approval by the Bombay High Court I. L. R., 10 Bom., 563, and has been adopted by us.

Brodhurst, J.

3. I also concur with the learned Chief Justice.

Tyrrell, J.

4. I concur in the order made.

Mahmood, J.

5. In delivering my judgment in Chajmal Das v. Jagdamba Prasad, ante, p. 260, in which I concurred in the conclusion at which the learned Chief Justice and my learned brethren arrived, I had no intention to concede any principle that the ruling in the case of Narain Das v. Lajja Ram I. L. R., 7 All., 693, could be interpreted so as to render the rule that was there laid down applicable also to the cases in which a defendant who happened also to be a respondent died, because it is to be borne in mind that in that case the appellant was defendant in the original suit. In that Full Bench case the whole of my dissentient judgment of course proceeded upon repudiating any distinction between a plaintiff-respondent and defendant-respondent, because I held there, at page 700 of the report, that the effect of Section 582 was to demolish the distinction between the plaintiff and defendant for purposes of the array of parties in appeal. The effect of my view was that the defendant-appellant was a 'plaintiff,' as indeed a plaintiff-appellant also would have been a 'plaintiff,' so a defendant-respondent would have been a 'defendant,' as also a plaintiff-respondent would be a 'defendant' for the purposes of art. 171B of soh. ii of the Limitation Act. That ruling, however, had to be considered by me in conjunction with Oldfield, J., in Ramashar v. Bisheshar Singh I. L. R., 7 All, 734, where I endeavoured to show that the Full Bench ruling in Narain Das v. Lajja Ram I. L. R., 7 All., 693, was distinguishable from cases in which a defendant-respondent had died, and the plaintiff who was originally in the aggressive position in the first Court was also in that same position in the Court below. In that view Oldfield, J., concurred with me, though with hesitation. Exactly the same view was taken by Oldfield, J., with the concurrence of my brother Tyrrell, in Baldeo v. bismillah Begam I. L. R., 9 All., 118. I think these two cases are authorities for

showing that a distinction does lie between the case of the death of a plaintiff-respondent and a defendant-respondent.

6. There is indeed the case of *Balkrishna Gopal v. Bal Joshi Sadashiv Joshi*, I, L. R., 10 Bom., 663, in which West, J., without having his attention drawn to this distinction, has applied a rule similar to that of *Narain Das v. Lajja Ram* I. L. R., 7 All., 693, to the case of the death of the defendant-respondent. But that judgment, with all due respect for such an eminent Judge, does not seem to me to have dealt with the real difficulty in the case--i. e., the effect of reading Section 3 of the Civil Procedure Code with Article 171B of the Limitation Act. That enactment, as I said in the case of *Narain Das v. Lajja Ram* I. L. R., 7 All., 693, and as was said by Field and Beverely, JJ., in *Soshi Bhusan Chund v. Grish Chunder Taluqdar* I. L. R., 11 Cal., 694, is to show that 'defendant' as it occurs in Article 171B does include a respondent.

7. Whether it includes a plaintiff-respondent or not is a matter undoubtedly settled by the ruling in the case of *Narain Das v. Lajja Ram* I. L. R., 7 All., 693. The rulings of the Full Bench of Madras and other High Courts to which I allude have been made by me in *Muhammad Husain v. Khushalo*, ante, p. 223, which is also a Full Bench case, need not be referred to again. But why the word 'defendant' should be interpreted as excluding a defendant who is admittedly a defendant, but happens also to be a respondent, I confess with due deference that I fail to see. These words must be understood either with due regard to Section 582 or not. If so understood, then by Section 3 of the Civil Procedure Code the 'defendant' in Article 171B must be understood as defendant is understood in the Civil Procedure Code, and Section 582 is an essential part of that Code and defines a respondent. If the Civil Procedure Code lends us no help, then there is no rule of interpretation which would limit a term in itself general only to a defendant who does not happen to be a respondent.

8. In this view of course I am in a portion of my ratio decidendi departing from the judgment in *Narain Das v. Lajja Ram* I. L. R., 7 All., 693. But it is in consequence of the opinion of the majority of the Judges that I cannot utilize the definition of 'defendant' in Section 582 for interpreting Article 171 B of the Limitation Act.

9. I am of opinion that inasmuch as the Full Bench case of this Court in *Narain Das v. Lajja Ram* I. L. R., 7 All., 693, does not settle the exact point now before me, the word 'defendant' read with clause 2 of Section 3 of the Civil Procedure Code in conjunction with Section 582 does include a defendant-respondent, and that a plaintiff-appellant not applying within the time provided by Article 171 B to bring upon the record the proper parties, is liable to the abatement of his appeal within the meaning of Section 368 of the Civil Procedure Code read with Section 582. I would therefore allow the application made by the heir of the deceased, and I would declare that this appeal should abate with costs.

10. As to the second application, viz., that made by Mr. Conlan, it follows from what I have said that that application cannot be maintained, and those reasons are in principle the same as those stated by me in the case of *Narain Das v. Lajja Ram* I. L. R., 7 All., 693, as also in my recent judgment in *Muhammad Husain v. Khushalo*, ante, p. 223. It is an application which admittedly having been made after the lapse of sixty days as provided by Article 171B is an application which cannot be entertained, because we should then be placing upon the record of an appeal which has abated persons who are the heirs of deceased respondents. I would therefore reject that application see Act VII of 1888, Section 66 (4).