

Ram Gopal Sharma Vs. Ist Additional District Judge, Meerut and Others

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Court : Allahabad

Decided On : May-05-1992

Reported in : AIR1993All124

Judge : S.C. Verma, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order 22, Rule 1; [Limitation Act, 1963](#) - Schedule - Article 137

Appeal No. : Civil Misc. Writ Petition No. 15262 of 1983

Appellant : Ram Gopal Sharma

Respondent : ist Additional District Judge, Meerut and Others

Advocate for Def. : S.C. and ;R.P. Agarwal, Adv.

Advocate for Pet/Ap. : Ambrish Kumar Sharma, Adv.

Judgement :

ORDER

An ex parte order dated 16-4-1979 was passed by the Judge Small Causes Court in S.C.C. Suit No. 104 of 1978 decreeing the Plaintiff's suit for arrears of rent and ejectment. The suit was filed by one Sri Ratan Prakash along with 5 others, namely, Smt. Ram Murti Devi, widow of late Sri Shiv Shanker, Jagannath Prakash, Narendra Kumar, Virendra Kumar and Surendra Kumar, minor, all sons of Sri Shiv

Shanker. Aggrieved by the ex parte order dated 16-4-1979, the petitioner-tenant filed Revision No. 258 of 1979. During the pendency of the revision, the plaintiff-respondent filed an application on 24-7-1980 to the effect that opposite party NO. 4 in Revision, namely, Narendra Kumar had died on 3-12-1979. As the heirs and legal representatives had not been substituted, the revision is liable to be abated. The petitioner filed objections and alleged that on the death of one of the opposite parties who is co-owner/co-landlord, the revision would not abate as the right to sue survives to other respondents. It was further stated that there was no need to implead the heirs and legal representatives. The learned V Additional District Judge by order dated 10-12-1980 dismissed the revision as abated had held that the suit was filed by all the respondents as co-landlord including the deceased and as such the cause of action so far as the deceased respondent is concerned would not survive to the surviving respondent. The petitioner, in the meantime, also applied for substitution of the heirs of deceased opposite party No. 4 by an application dated 11/17-12-1980 11/17-12-1980 , By means of this application, the widow of deceased Narendra Kumar and his minor son Master Pappu under the guardianship of his mother were sought to be impleaded as opposite parties No. 4/1 and 4/2. The petitioner also filed a Review petition to recall the order dated 10-12-1980 passed by the II Additional District Judge in S.C.C. Revision No. 258 of 1979. The learned Judge while rejecting the reviewpetition held that although the period for filing the substitution application and to bring on record the heirs and legal representatives of the deceased would be three years, yet as the petitioner had taken a clear stand that there was no need to implead the heirs and legal representatives of the deceased Narendra Kumar, no useful purpose would be served for waiting for three long year of the expiry of limitation. The learned Judge was also of the view that the cause of action would not survive to the remaining opposite parties on the death of one of them.

2. In my opinion, both the stands taken by the learned Judge are not correct and are not in conformity with the law laid down in various decisions of this Court. In Chandra Deo Pandey v. Sukhdeo Rai 1972 ALJ 603 (FB) : (AIR 1972 All 504), it has been held that for substituting the heirs and legal representatives of the deceased opposite party in revision, the period of limitation under Art. 137 of the Limitation Act would be three years. In the present case, the petitioner had filed

the application for substitution of heirs and legal representatives within 3 years which is still pending. The learned District Judge was not justified in holding that the petitioner had taken a clear stand that there was no need to implead the legal representatives of the deceased. Firstly an application has already been filed within limitation for substituting the heirs and legal representatives. Secondly in the objections filed to the application to abate the revision, it was stated that as the right survives to other opposite parties, the revision as a whole would not abate. It was also alleged that he had no knowledge of the death of opposite party and for this reason he could not implead the heirs of the deceased. It was only as an alternative case it was alleged that there is no necessity for impleading them as the other heirs of Shiv Shanker have been impleaded as opposite parties Nos. 2,3,5 and 6, in the Revision.

3. On careful examination of these objections and the averments made thereunder, the learned Judge was not correct in stating that the petitioner had taken the stand that there is no need to implead the heirs and legal representatives of the deceased.

4. As regards the finding that the case of action would not survive to the remaining opposite parties on the death of one of them is also not correct. In *Pal Singh v. Sunder Singh*, AIR 1989 SC 758 it has been held that where the co-owner of the premises in question did not object to the claim for eviction made by the co-owner/landlord against his tenant, eviction petition would be maintainable even in the absence of the co-owners. In *Gopal Dass v. I Addl. District Judge Varanasi*, 1987 (1) ARC 281 : (AIR 1987 All 261 (FB), it was held:

'In view of these decisions, there can, therefore, be little doubt as to the maintainability of the action for eviction brought by one co-owner without impleading the other co-owners. The view taken in *Devi Charan v. III Additional District Judge*, 1980 ARC381 cannot be said to have laid down the correct law and it is overruled. The view taken in *Rang Nath v. State of U.P.*, 1984 (I) ARC 642 : (1984 All LJ 455) is correct and we reiterate the same.'

5. In view of the aforesaid decisions, even if the heirs and legal representatives of the deceased are not impleaded and the other co-owners are already on record,

the right survives to other opposite parties and the revision as such would not abate.

6. For the aforesaid reasons, both the orders dated 7-11-1983 passed by the 1st Additional District Judge and the order dated 10-12-1980 passed by the V Additional District Judge are liable to be set aside.

7. The petition is allowed. The order dated 7-11-1983 and 10-12-1980 are quashed. The I Additional District Judge, Meerut is directed to decide S.C.C. Revision No. 258 of 1979 on merit after considering the substitution application filed by the petitioner to implead the heirs and legal representatives of deceased opposite party No. 4. There shall be no order as to costs.

Petition allowed.

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