

Raj Kumar Vs. the State of U.P. and ors.

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Court : Allahabad

Decided On : Jan-09-1975

Reported in : AIR1975All216

Judge : T.S. Misra, J.

Acts : [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 22, Rule 4

Appeal No. : Writ Petn. No. 268 of 1970

Appellant : Raj Kumar

Respondent : The State of U.P. and ors.

Advocate for Def. : O.N. Zutshi, Chief Standing Counsel and ;B.L. Shukla, Adv.

Advocate for Pet/Ap. : M.M. Lal, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

T.S. Misra, J.

1. This is a writ petition under Article 226 of the [Constitution of India](#) seeking for Writ of Certiorari to quash the orders passed by the opposite parties Nos. 4, 3 and

2, being Annexures Nos. 7, 8 and 9. It appears that when the writ petition was filed Devi Shanker opposite party No. 6 had already died. However, during the pendency of the writ petition Gauri Shanker opposite party No. 8 also expired. The petitioner did not have the legal representatives of the deceased Devi Shanker and Gauri Shanker substituted and the petition abated against the said opposite parties Nos. 6 and 8 vide order of this Court dated 16-11-1972. A preliminary objection was raised on behalf of the opposite parties that in the circumstances the writ petition being not properly constituted, cannot proceed and has abated as a whole. For the petitioner it was urged that the writ petition would not abate as a whole inasmuch as the consolidation authorities, whose orders were being impugned, had defined the shares of the opposite parties Nos. 5 to 10 and had directed for the partition of the land in question accordingly. The petitioner had claimed title to the land on the ground that he had perfected his title by remaining in hostile possession thereof for more than the prescribed period. Since the shares of opposite parties Nos. 5 to 10 were defined, he could still be declared to have an interest in the land over which the surviving opposite parties Nos. 5, 7, 9 and 10 were claiming their right and interest and an order could be passed in the writ petition which would not result in any inconsistency. In support of this contention the learned counsel referred me to a decision of the Supreme Court in State of Punjab v. Nathu Ram, AIR 1962 SC 89. He also placed reliance on two decisions of this Courts in Anwar Khan v. Deputy Director of Consolidation, 1973 RD 458 = (AIR 1973 All 146) and Nasir Ahmad v. Baboo Lal, 1974 RD 130 (All). In my view, none of these decided cases helps the petitioner. It is by now a settled law that the courts would not proceed with an appeal:

(a) when the success of the appeal may lead to the Court's coming to a decision which will be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the Court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent;

(b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the Court: and

(c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective that is to say it could not be successfully executed.

2. These three tests are not cumulative tests. Even if one of them is satisfied the court may dismiss the appeal. (See *R. P. Gupta v. Murli Prasad*, AIR 1972 SC 1181).

3. These tests can be applied in the case of writ petitions as well, in fact, these three tests were applied in the case of writ petition in 1973 RD 458 = (AIR 1973 All 146) (supra). In *Anwar Khan's* case also the respondent No. 2 had died and his legal representatives were not brought on record. The writ petition had abated against him. A preliminary objection was raised that in the circumstances the writ petition could not proceed inasmuch as the finding of the Deputy Director of Consolidation was joint and indivisible. That contention prevailed and it was held that the petition abated as a whole. Applying the aforementioned principles to the present case I am of the view that the preliminary objection raised is well founded. The petitioner, as pointed out above, had claimed title to the land on the basis of his hostile possession. A concurrent finding of fact was recorded by the consolidation authorities that the petitioner had not perfected his title by adverse possession. Now, if the petitioner succeeds in this writ petition against the surviving contesting respondents, that would lead to a finding inconsistent with the one which was recorded by the consolidation officer and confirmed by the Settlement Officer Consolidation and the Deputy Director of Consolidation. If the petitioner is to succeed in the petition it 'would lead to the court's coming to a decision that the petitioner had been in adverse possession of the plot in dispute and he thereby perfected his title over the entire plot whereas the concurrent finding recorded by the consolidation officer, Settlement Officer, Consolidation and Deputy Director of Consolidation is that the petitioner was not in adverse possession. No partition by metes and bounds has yet taken place and no specific portion of the plot in dispute has been allocated to the deceased respondents. That being so, it cannot be said that the deceased respondents were not necessary parties to the writ petition. The impugned orders are indivisible and proceed on a ground common to the respondents Nos. 5 to 10. The interest of the surviving respondents and the deceased respondents were joint and indivisible.

Hence, in the event of success of the writ petition there will be two inconsistent and contradictory orders. The impugned orders against the deceased respondents have already become final. The writ petition having abated against deceased respondents Nos. 4 and 8, cannot, therefore, proceed and is liable to be dismissed.

4. The writ petition is accordingly dismissed with costs.

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