

Ram Lal and ors. Vs. Debi Singh and ors.

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Court : Allahabad

Decided On : Nov-29-1909

Reported in : 4Ind.Cas.385

Judge : Tudball, J.

Appellant : Ram Lal and ors.

Respondent : Debi Singh and ors.

Judgement :

Tudball, J.

1. This appeal arises out of a suit for declaration of title brought by the plaintiffs-respondents against certain defendants. The suit related to certain plots of land. The plaintiffs claimed that these plots belonged to them and were allotted to the mahal on partition. The defendants claimed that these plots had been allotted to them on partition. The defendants were the owners of one mahal, the plaintiffs were the owners of the other mahal. The Court of first instance decreed the suit in respect of one plot and dismissed it with respect to the other. On appeal the lower appellate Court granted the plaintiff a decree in respect to both plots excepting an infinite small area of one. The decree was a joint decree against all the defendants, the latter all appealed. Pending the appeal one of them died and his representative in title was not brought on the record within the period allowed by law. An application was as a matter of fact made out of time but it was disallowed.

2. A preliminary objection is now taken before me that under the authority of the ruling in Kamla Pat v. Baldeo 22 A. 222 the appeal must be held to have abated because this Court has not before it all those persons whose interest might be affected by the decree. That suit was one to obtain a certain declaration. As in that suit so also in the present one, one of the appellants died pending the appeal and his representatives were not brought on the record within the period allowed by law.

3. The two cases are in my opinion parallel. It is impossible to bring before the Court all persons whose interest may be affected by the decree in appeal. The appellants have only themselves to thank for the present state of affairs. The appeal must, therefore, be deemed to have abated. I dismiss the appeal with costs including, in this Court, fees on the higher scale.

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