

Smt. Radha Devi and anr. Vs. Ramesh Kumar

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Court : Allahabad

Decided On : Apr-18-1988

Reported in : AIR1988All262

Judge : A.P. Mishra, J.

Acts : [Limitation Act, 1963](#) - Sections 5; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 22, Rule 9

Appeal No. : Civil Revn. No. 793 of 1987

Appellant : Smt. Radha Devi and anr.

Respondent : Ramesh Kumar

Advocate for Pet/Ap. : S.N. Singh and ;R.N. Singh, Advs.

Disposition : Revision allowed

Judgement :
ORDER

A.P. Mishra, J.

1. At the admission stage the respondent was served and he put in appearance and counter and rejoinder affidavit were exchanged. Therefore, this revision is disposed of finally at 'the admission stage itself.

2. The present revision is directed as against an order dated 22-7-1987 passed by the trial Court by virtue of which the applicants' suit was abated and an application for setting aside abatement was rejected.

3. I have heard learned counsel for the parties and perused the records.

4. In the present case the applicants urged they are purdanashin ladies and not literate and that they were ignorant of the fact that an application for substitution has to be made within certain stipulated time. During the pendency of the suit the plaintiff landlord Kedar Nath died and thereafter an application for substitution was made in the Court below. It is stated that in spite of the fact of the death of the landlord Kedar Nath on 26th May, 1986, it was only on the 29th October, 1986, an application for setting aside abatement was made. It seems the reason disclosed by the applicants for condoning the delay was not accepted and his application was rejected. Thereafter, the present revision has been moved and after filing the same an application for impleadment was also made to make the other heirs represented in the revision. In paragraph 9 of the affidavit accompanying the impleadment application condonation of delay has been sought for bringing the other legal heirs on the record of the revision. In this case, a preliminary objection was raised on behalf of the respondent that since all the heirs of the deceased have not joined the revision the present revision is not maintainable. It is not in dispute that the applicants are also the heirs and there is no partition of the property of the deceased and, therefore, every inch of the property left by the deceased belongs to the applicants along with other heirs jointly. In *Daya Ram v. Shyam Sundari*, AIR 1965 SC 1049, a similar objection was raised wherein the Supreme Court has held that since the impleaded legal representatives sufficiently represent the estate of the deceased and even though other heirs were not brought on record could not make the appeal abate. Similar is the position in the present case, and, therefore, by not filing the revision by other heirs of the deceased would not make the present revision incompetent.

5. Learned counsel for the respondent also relied on a decision. *Hira Lal Jasrapuri v. Illrd Addl. District Judge, Gorakhpur*, 1982 All Rent Cas 117, in which it was held :

'Unless the other co-landlords were impleaded as defendants in the suit filed by one of the co-landlords alone, even a decree for arrears of rent could not be passed.'

It is significant the portion on which reliance has been placed in this decision is 'unless the other co-landlords were impleaded as defendants'. It is not in dispute in the present case, an impleadment application was moved to implead the other heirs as respondent in this revision and a prayer was made for condonation of delay in making that application for bringing them on the record.

6. The main contention on behalf of the applicants was, on the facts and circumstances of this case great prejudice has been caused to the applicants on account of the trial Court holding that the whole suit has abated, since an application for abatement was made belated. Reliance was placed on a case Collector, Land Acquisition, Anantnag v. Most. Katiji, AIR 1987 SC 1353, in which a principle has been laid down how the Court should approach in deciding the matter when an appeal or an application was made beyond time. In this case the Supreme Court has diluted the rigor of the examination by the Court for deciding cases for condonation of delay and has laid down :

'Ordinarily a litigant does not stand to benefit by lodging an appeal late.'

It was further held : --

'Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.....

When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to

benefit by resorting to delay. In fact he runs a serious risk.

It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.'

7. In view of the aforesaid decision given by the Supreme Court and perusing the facts and circumstances of this case I find that the trial Court committed an error in not condoning the delay and holding the suit to have abated. On the same ground the application for impleadment which has been made and which has been disposed of along with this order also deserves to be allowed. The applicants are, therefore, ordered to be impleaded as respondents in the present case.

8. As I have said, the reasons given in the application by the applicants could not be said to be such on which an inference could be drawn that the applicants made this delay deliberately or on account of culpable negligence or on account of mala fides. In view of this, the impugned order is liable to be set aside.

9. Accordingly, this revision is allowed, the impugned order dated 22nd July, 1987 is set aside and the case is remanded to the Court below to decide it afresh in accordance with law. Costs on parties.

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