

Mithan Lal Vs. Maya Devi and ors.

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Court : Allahabad

Decided On : Mar-07-1929

Reported in : AIR1929All444; 121Ind.Cas.689

Appellant : Mithan Lal

Respondent : Maya Devi and ors.

Judgement :

1. This is a judgment-debtor's appeal from an order of remand. Mt. Nando Kuer, the widow of Durga Prasad, brought a suit against Mante Lal, Gaya Prasad, Jamuna Prasad and Lachhmi Narain for her maintenance due to her under an agreement made with them and charged on certain property and obtained a preliminary decree from the Munsif of Jalesar. The appeal against this preliminary decree was confirmed on 21st October 1923.

2. There next followed some efforts on behalf of Mt. Nando Kuer to execute the decree but on 20th January 1926, it was held as we are informed, that there could be no execution till a final decree had been prepared under Order 34, Rule 5. On the same date, 20th January 1926, Mt Nandu Kuar made a gift of her rights secured by this preliminary decree to her daughters, one of whom was Mt. Maya Devi, the present respondent. On 29th January 1926, Mt. Nando Kuer died. No steps were thereupon taken by anybody to bring her legal representatives on the record. The litigation continued up to the High Court where on 5th May 1926 Mante Lal, who was there the appellant asked to be allowed to withdraw his

appeal. Again nothing happened till 20th December 1926, when Mt. Maya Devi, on the strength of the gift to her and her sister of 20th January 1926, made an application to the execution Court. This application was described to us at the hearing as one containing two prayers. Firstly, for substitution of Mt. Maya Devi's name as legal representative of the deceased plaintiff decree-holder, Mt. Nando Kuer and secondly, for the preparation of a final decree. On examination, however, that application shows that it contained no prayer for substitution of her name as the legal representative of Mt. Nando Kuer. The application, as it stands, is simply one made by Mt. Maya Devi for the preparation of a final decree and was made on the basis of the assignment by gift to her of the preliminary decree, and the only excuse for suggesting that it could possibly be regarded as an application for substitution also is that it does contain the one word 'waris' in direct conjunction with the word 'malik.' It was, however, in form and in effect really nothing but an application for the preparation of a final decree. On 19th February 1927, Mante Lal objected that the application was barred by limitation, relying upon Arts 176 and 171, Lim. Act and the Full Bench decision in the case of Churya v. Beneshwar : AIR1926 All217 . It was contended that the suit had abated and that no application having been made within sixty days to set aside the abatement, the whole application was barred by Arts. 176 and 171, Lim. Act as interpreted by the Full Bench case. Mante Lal further challenged the validity of the gift of 20th January 1926, and finally challenged the statement that Mt. Maya Devi was heir or one of the heirs of Mt. Nando Kuer. Mante Lal's objection on the ground of limitation were accepted by the trial Court and the application of Mt Maya Devi rejected. In appeal the District Judge overruled the objections of Mante Lal, holding that Mt. Maya Devi was not making any application in regard to the substitution of legal representatives at all, but was simply applying in her capacity as assignee and she, therefore, had three years within which to make the application. Being of this opinion, the District Judge remanded the case for disposal on the merits. The objector, or rather Mithan Lal, his son, Mante Lal having died, has come in appeal to this Court.

3. The learned District Judge has held that in this case no question of abatement arises at all as Mt. Maya devi did not make her application of 20th December 1926, as legal representative of Mt. Nando Kuer but as her assignee from Mt.

Nando Kuer in her lifetime Holding this view the learned District Judge has brushed aside all the pleas of abatement, etc., saying:

The pleas of limitation, of abatement and of release (sic-setting aside) of abatement are quite technical.

4. By 'technical' there is no doubt that he meant to say 'irrelevant.' In this view we think that there is no 'doubt whatever that ho was right. A consideration of the scheme of Order 22 in our view leaves no doubt on this point. It is headed 'Death, marriage and insolvency of the parties.' Rule 1 specifically declares that the death of a plaintiff shall not cause the suit to abate if the right to sue survives. In this case there can be no doubt that Mt. Maya Devi had a right to sue surviving in her unless that right was barred by limitation. It is apparent, therefore, that the death of Mt. Nando Kuer was not in itself sufficient to cause the suit to abate. How then could it abate? Rules 2 to 6 proceed to deal with the consequences of the death of one or other of the parties. Rule 2 is clearly inapplicable. We were much pressed with Rule 3. It is clear that the rule concerns what is to happen in regard to the legal representative of the deceased plaintiff, and by Sub-rule 2 it is clear that if no application is made by the legal representative within the time allowed by law the suit shall abate. But it is important to note that the words have been added 'so far as the deceased plaintiff is concerned.' Rules 4 and 5 similarly concern the effect of the death on the rights of legal representatives. Rule 6 is irrelevant to the matter before us. Rules 7 and 8 deal with marriage and insolvency the second and third of the main heads referred to in the title of the order. Rule 9 clearly deals with the effect of abatement or orders of dismissal passed against legal representatives of parties or against assignees or receivers in insolvency proceedings. We then come to Rule 10 which is the rule really applicable to the present case. It refers to 'other cases' of assignment, etc. Here clearly we have 'another case,' that is to say, one in which we are not concerned with the effect of the death of a party on the rights of the legal representatives of that party or on the rights of assignees or receivers in insolvency proceedings. There is no justification for applying rules governing abatement to a person who does not claim to come in as a legal representative. Mt. Maya Devi was entitled to say:

Whether I am or am not the legal representative of Mt. Nando Kuer (a question which has not been decided at all) I am the assignee of Mt Nando Kuer by a gift executed by her in her lifetime and as such assignee I am entitled by the leave of the Court to continue the suit.

5. As we have already held that the rules governing abatement occur only in those rules which deal with the rights of the legal representatives, and Mt Maya Devi claiming as an assignee was entitled to say that she is not affected by those rules, and Rule 1 says that the mere death of the plaintiff does not by itself cause abatement there is, in our view, no ground for holding that her application was governed by Arts. 176 or 171, Lim. Act and she had three years within which to make her application. The order of the lower appellate Court was, therefore, in our view, correct, and we dismiss the appeal with costs.

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