

Prem Dutt Gupta Vs. Dhan Devi, Etc.

Prem Dutt Gupta Vs. Dhan Devi, Etc.

SooperKanoon Citation : sooperkanoon.com/685955

Court : Delhi

Decided On : Mar-20-1980

Reported in : ILR1980Delhi486

Judge : M.L. Jain, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 22

Appeal No. : Civil Miscellaneous (Main) Appeal Nos. 866 and 8671 of 1979 and Regular Second Appeal No. 40 of 1979

Appellant : Prem Dutt Gupta

Respondent : Dhan Devi, Etc.

Advocate for Pet/Ap. : P.N. Bhardwaj,; Daya Kishan and; Kamlesh Bansal, Advs

Judgement :

M.I. Jain, J.

(1) Two constructions stand on a plot in Green Park, New Delhi which are marked as property No. F-49 and F-49-A. F.49A was owned by Smt. Dhan Devi and F-49 was owned by defendant Prem Dutt Gupta. There was a passage and a stair-case leading to the first floor. Smt. Dhan Devi brought a suit that Prem Dutt Gupta raised construction in the common passage by which he left 21/2 ft. passage for the plaintiff and completely blocked the stair-case. She prayed for removed of the

wall constructed in the passage and of the obstruction in the stair-case. Arguments were heard on September 16, 1976. Smt. Dhan Devi died on November 27, 1976. The court inspected the site on December 25, 1976. Arguments were again heard on January 3, 1977 and the suit was decided on January 4, 1977. The decree was drawn in the name of Smt. Dhan Devi without mentioning that she was dead.

(2) The defendant went in appeal in which the respondent was described as Dhan Devi deceased through her husband Shri B. R. Parihar. No objection was raised as to this by anybody and the appeal came to be dismissed on February 16, 1979, by the Additional District Judge. The decree of the first appellate court was also drawn in the name of Smt. Dhan. Devi deceased through her husband B. R. Parihar. In the present appeal the Memo of parties described the respondents as 'Smt. Dhan Devi deceased through her husband Shri B. R. Parihar' or 'Shri B. R. Parihar'. The appeal was admitted on March 22, 1979. Demolition of the wall was sought to be stayed in C.M. 271/79 of which notice was issued.

(3) In his reply dated July 19, 1979, it was stated by B. R. Parihar that besides him, Ashok Parihar son and Biml a Chauhan daughter were two more legal representatives of Smt. Dhan Devi. The appeal has been filed against a dead person without bringing all the legal representatives on record and is, therefore, incompetent and nullity. To meet this challenge, the appellant has filed application C.M. 866/79 stating that it was for the first time in the reply of the respondent that he came to know that there were two more legal representatives of Smt. Dhan Devi. He maintained that the appeal was properly filed. However, if the court thought so proper, then it may direct that Ashok Parihar and Bimla Chauhan be also implead as legal representatives. He also made one more application C.M. 867/79 under Section 5 of the Limitation Act, 1963, praying for condensation of delay in bringing the two legal representatives also on record. These applications are opposed.

(4) Arguments were heard. The appeal has been filed against the very same parties which have been mentioned in the decree of the first appellate court. But it was urged by the learned counsel for the respondents that while a decree passed in favor of a deceased person is not a nullity but an appeal filed against a

deceased person will be a nullity. For this proposition he relies upon Jagdish Chander Bhalla and others v. Lakshman Swarup Bhatnagar and others T.L.R. (1971) 1 Del 505(1). V. S. Deshpande, J. (as he was then) observed that: 'he is not aware of any provision of law which bars a Court from passing a decree in favor of a person just because he is dead;' 'there is no inherent lack of jurisdiction in the Court therefore, to pass a decree because of the death of a party;' 'Such a decree although erroneous and liable to be set aside is not void nor open to collateral attack;' 'even when a defendant or a respondent dies before trial Court or the appellate Court decides a suit or an appeal, the decision is not necessarily invalidated.' In Ram Kishan v. Kartar Singh, it was held that decree becomes nullity only when court lacks inherent jurisdiction to try the matter. In Happy Valley Tea Co. and another v. Darshan Lal, : AIR1962 All541, it was however held that a decree passed in favor of a dead person is a nullity. But all these are points which will be considered when the appeal is argued. For the present the question is whether the appeal in its present form is incompetent and if so whether the appellant should be allowed to unplead the daughter and son of the deceased in the appeal.

(5) The learned counsel for the respondents urged that Order 22 Civil Procedure Code cannot be invoked because it applies only when a party dies pending a suit or appeal but it has no application where a party dies before filing of the appeal or the suit. It was pointed out that in this case it was in the knowledge of the appellant that Smt. Dhan Devi was dead and he should have filed his appeal against all the legal representatives. But it seems to me that under Section 153 C.P.C. an appeal filed for or against a dead party can be amended by bringing any of the legal representatives on record subject to law of limitation. One may profitably refer to Boddamallappa v. Sankappa A.I.R. 1962 My. 44(4). There is one more aspect of the question. One of the legal representatives has been on record in the proceedings before the appellate court and is on record of this appeal also. Unless fraud or collusion is shown more legal representatives should be allowed to be added. Where an appellant after diligence and bonafide enquiry ascertains who the legal representatives of a deceased respondent are, and brings them on record within the time limited by law, there is no abatement of the appeal. The impleaded legal representatives sufficiently represent the estate of the deceased and

a decision obtained with them on record will bind not merely those imp leaded but the entire estate including those not brought on record, provided there is no fraud or collusion. See Mohd. Sulaiman v. Mohd Ismail : [1966]1SCR937 . This appeal is, thereforee, competent. However, in the first appeal no objection regarding existence of two more legal representatives was raised and thereforee, it is the bonafides of the respondent which are suspect and not those of the appellant. That is also a sufficient cause for granting application under Section 5 of the Limitation Act.

(6) I, thereforee, allow both the applications C.M. Nos. 856 and 867 of 1979 and direct that Ashok Parihar and Bimla Chauhan be added as legal representatives, as prayed. That will meet the objections raised by the respondent.

(7) The cause title be amended. Smt. Bimla Chauhan is served. Fresh notice to Ashok Parihar be served for 18th April, 1980 after process fee has been filed again.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com