

**Poona Devi (Smt.) and ors. Vs. Prem Narain Through Lrs. and ors.**

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**Court :** Rajasthan

**Decided On :** Oct-31-2006

**Reported in :** RLW2007(2)Raj982

**Judge :** Narendra Kumar Jain, J.

**Appellant :** Poona Devi (Smt.) and ors.

**Respondent :** Prem Narain Through Lrs. and ors.

**Judgement :**

**Narendra Kumar Jain, J.**

1. Heard learned Counsel for the both the parties.
2. This order will dispose of three applications-first, under Section 151 of the - C.P.C. Filed by the first, under Section 151 of the C.P.C. Tiled by the respondents on 24.7.2006, second, under Order 22 Rule 4 read with Order 22 Rule 9(2) and Section 151 of the C.P.C. filed by the appellants on 4.8.2006, and third, under Order 22 Rule 9(2) of the CPC read with Section 5 of the Indian Limitation Act, 1887, filed by the appellants on 4.8.2006.
3. The learned Counsel for the respondents, Dr. Prakash Chandra Jain, in his application dated 24.7.2006, has prayed that the appeal be dismissed as having been abated on the ground that the application for substitution of legal

representatives of deceased-respondent No. 1 Prem Narain on the record, was accepted subject to objections, which may be raised by the legal representatives of the deceased-respondent. The contention of the learned Counsel for the respondents is that the respondent No. 1 Prem Narain expired on 22.5.1989 and application for substitution of his legal representatives was filed on 11.9.1989 which was barred by limitation but the same was allowed on 13.12.1989 subject to objections. His contention is that period of limitation for filing the application under Order 22 Rule 4 C.P.C. was 90 days, but application was not filed within a period of limitation, therefore, appeal had abated on expiry of 90 days period of limitation. Thereafter, the application under Order 22 Rule 9 C.P.C. could have been filed within 60 days from the date of abatement of the appeal, but the same was also not filed within a period of limitation.

4. Learned Counsel for the appellants has filed application under Order 22 Rule 9(2) of the CPC read with Section 5 of the Indian Limitation Act, on 4.8.2006, wherein he has contended that the respondent No. 1 Prem Narain expired on 22.5.1989 and this fact came to the knowledge of the appellants when the entry of death of Prem Narain was made in the register of the Registrar Officer, from where they immediately obtained the copy of the entry and filed the application before this Court way-back on 11.9.1989 for taking his legal representatives on the record.

5. It appears from the record and the facts mentioned in the applications that the plaintiff-respondent Prem Narain expired on 22.5.1989 and an application under Order 22 Rule 4 of the C.P.C. ought to have been filed within 90 days from the date of death of respondent, but the same was filed after some delay i.e. on 11.9.1989. Subsequently, an application under Section 5 of the Limitation Act was filed by the appellants to condone the delay in filing the application under Order 22 Rule 4 of the C.P.C. way -back on 15.11.1989. The application for substitution was listed before this Court for orders on 13.12.1989 and it was allowed subject to objections. Under the aforesaid liberty, which was granted by this Court on 13.12.1989, the respondents raised the above objection that the appeal had abated automatically when application for setting aside the abatement was not filed within 60 days from the date of abatement of the appeal.

6. I have considered the submissions of learned Counsel for both the parties.

7. There is no dispute in between both the parties that the plaintiff-respondent Prem Narain died on 22.5.1989 and an application under Order 22 Rule 4 of the C.P.C. for substitution of his legal representatives on the record was filed on 11.9.1989. The application under Section 5 of the Limitation Act for condonation of delay in filing the application under Order 22 Rule 4 of the C.P.C. was also filed by the appellants before this Court on 15.11.1989. The application under Order 22 Rule 4 of the CPC was allowed by this Court on 13.12.1989 subject to the objections. The period of limitation for filing the application under Order 22 Rule 3 or 4 of the C.P.C. is 90 days from the date of death of person concerned and in case the same is not filed then the appeal abates automatically on the day the period of 90 days expires, and remedy for setting aside the abatement of appeal is available under Order 22 Rule 9 of the C.P.C. If the application has not been filed under Order 22 Rule 9 of the C.P.C. within time i.e. 60 days from the date of abatement of the appeal then an application can be filed under the provisions of the Limitation Act for condonation of the delay.

8. In the present case the application under Order 22 Rule 4 of the C.P.C. as well as application under Section 5 of the Limitation Act were on the record when the order dated 13.12.1989 was passed by this Court and legal representatives of deceased-respondent Prem Narain were taken on the record. The court did not pass any order on 13.12.1989 regarding abatement of the appeal in spite of the fact that there was no application under Order 22 Rule 9 of the C.P.C. for setting aside the abatement. It appears that this Court impliedly condoned the delay on the application under Section 5 of the Limitation Act in filing the application under Order 22 Rule 4 of the C.P.C. and allowed the application dated 10th/11th September, 1989 under Order 22 Rule 4 of the C.P.C. for substitution of legal representatives of deceased respondent Prem Narain on the record. The matter remained pending for about 16 years. The application was filed way back on 11.9.1989 with delay of 22 days in filing the application. The application under Section 5 of the Limitation Act was also on the record when the application under Order 22 Rule 4 C.P.C. was allowed on 13.12.1989. In these circumstances I am of the view that the appeal did not abate against the deceased-respondent Prem

Narain and his legal representatives were rightly taken on the record. The application dated 24.7.2006 filed by the respondent is, therefore, rejected.

9. In view of above discussion and view of this Court the appeal had not been abated, therefore, it is not necessary to pass any order on the application dated 4.8.2006 filed by the appellants under Order 22 Rule 9 of the CPC read with Section 5 of the Limitation Act for setting-aside abatement of the appeal and the said application dated 4.8.2006 is also disposed of.

10. The third application dated 4.8.2006 filed by the appellant under Order 22 Rule 9(2) and Section 151 of the C.P.C. for deleting the names of respondent No. 1/1 Smt. Gulab Devi Widow of late Shri Prem Narain, and the respondent No. 3 Hari Ram is concerned, it is contended in the application that the legal representatives of deceased-respondent No. 1/1 Smt. Gulab Devi are already on the record and so far as the respondent No. 3 is concerned he has already sold his share in the disputed property, therefore, the names of both the respondents be deleted. In view of the facts and circumstances of the present case, I allow the application dated 4.8.2006 filed by the appellant and order to delete the names of respondents No. 1/1 Smt. Gulab Devi W/o late Prem Narain, and the respondent No. 3 Hari Ram, from the array of the respondents at the risk of the appellants.

11. The amended cause title has already been filed by the appellants, which may be taken on the record and be placed at proper place of the file.

12. Put up tomorrow for hearing.

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