

Fatta and ors. Vs. Dillu

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Court : Himachal Pradesh

Decided On : Dec-18-1953

Reported in : AIR1954HP44

Judge : Ramabhadran, J.C.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 115 - Order 22, Rule 1;
;Limitation Act, 1908 - Schedule - Article 176

Appeal No. : Civil Revn. No. 36 of 1952

Appellant : Fatta and ors.

Respondent : Dillu

Advocate for Def. : Kirti Ram, Adv.

Advocate for Pet/Ap. : R.C. Sawhney, Adv.

Judgement :

ORDER

Ramabhadran, J.C.

1. Dillu respondent died on 31st Jeth, corresponding to 13-8-1953. An application to bring his legal representatives on the record was filed on 16-9-1953, i.e., more than 90 days after his death. It was, therefore, urged by learned counsel for the respondent that the revision petition has abated. On behalf of the petitioners, on

the other hand, it was argued that in revision, rules regarding abatement do not apply nor is limitation applicable. I have heard learned counsel for the parties and have also been referred to the case law on the point.

2. Learned counsel for the respondent cited--'Basawanjanayulu v. Ramalingayya', AIR 1938 Mad 115 (A), where a single Judge of that High Court held that:

'Order 22, Rules 3 and 4 are applicable to proceedings under Section 115 and an order passed by the High Court on a petition under Section 115 in ignorance of the fact of death of the petitioner more than ninety days previously is one made without jurisdiction and is a nullity.'

This ruling was, however, dissented from by a subsequent Division Bench ruling of that very High Court reported in--'Manickam v. Ramanathan', AIR 1949 Mad 435 (B). It was decided by that Bench that:

'There can be no question of abatement but for the combined application of the provisions of Order 22, Rules 3 and 4 and the material articles of the Limitation Act. As neither Order 22, Civil P. C., nor the Limitation Act, applies to civil revision petitions, there can be no question of abatement of such petitions.'

Sri Kirti Ram also cited--'Chakrapani v. Biharilal', AIR 1953 Madh-B 272 (C), where a single Judge of that High Court, dissenting from--'AIR 1949 Mad 435 (B)' and--'Mahomed Sadaat Ali Khan v. Administrator Corporation City of Lahore', AIR 1949 Lah 186 (FB) (D), observed that :

'Where any of the parties to a revision dies, the suit abates under Order 22. Steps, therefore, should be taken for setting aside the order of abatement under Order 22, Rule 9, which applies to a revision proceeding by virtue of Section 141, before applying for substitution of legal representative.

The words 'all proceedings' occurring in Section 141 embrace proceedings of all character, original as well as those that are not original. The word 'all' is a comprehensive term. Thus, a revision is a proceeding to which Section 141 applies.'

I have already referred to the Madras ruling mentioned above. In--'AIR 1949 Lah 186 (D)', the Full Bench of that High Court held : 'Order 22, Rule 3, Civil P. C., is not applicable to revisions. It cannot be read in conjunction with Section 141 as Section 141 is so drafted as to enable a Court to apply the procedure in regard to suits to such proceedings as are in pari materia with suits and thus original in character. A revision is very much unlike a suit. The procedure provided for suits would be mostly inapt and inappropriate to proceedings in revision. Further Article 176, Limitation Act, cannot be made applicable to a revision. Hence where a party going in revision dies pending the revision petition and an application is made by his legal representatives to be brought on record after the expiry of the period of 90 days the petition for revision cannot be dismissed on the ground of abatement.'

My attention was also drawn to--'Naoomal Tourmal v. Tarachand Sobhraj', AIR 1933 Sind 200 (E), where it was held by the former Judicial Commissioner's Court of Sind that:

'The provisions of Order 22 about abatement of suits and appeals do not apply to applications for revision.

There is an analogy between a revision application and an appeal but the two are not identical. In a suit or an appeal the points to be decided ordinarily are those on which the parties are at variance. A revision application stands on a different footing. It is a matter between a higher Court and a lower Court; in fact revisional powers may in certain cases be exercised without an appeal or an application by any of the parties concerned.'

3. Following the view of the High Courts of Madras, Lahore and the Sind Judicial Commissioner's Court, I hold that the provisions of Order 22 do not apply to revision petitions. Consequently, there is no question of the revision petition abating because the application to substitute Mt. Gulabi in place of Dillu deceased was filed more than 90 days after Dillu's death. The necessary substitution however may be made, since it is not disputed that she is the legal representative of Dillu and limitation apart, no objection has been raised to her name being brought on the record.

4. There is one other application, which has to be disposed of. Mt. Hasnu, widow of Sidhu, one of the petitioners in this revision died on 4-2-1953. On 10-4-1953, Santu petitioner put in an application praying that Mt. Hasnu's name may be struck off from the petition and the remaining two petitioners, namely Fatta and Santu himself, be treated as the sole petitioners in this case. It was further stated in that application that Mt. Hasnu, as donor, was only a pro forma defendant and had no interest left in the suit property.

Objection has been raised to this petition on the ground that in the plaint Mt. Hasnu was not shown as a pro forma defendant and her legal representatives have not been brought on the record within the period of limitation. In my view, however, the objection cannot stand. This is after all only a revision petition and, as already held above, the provisions of Order 22 do not apply here. Santu and Fatta by themselves are competent to come up in revision. I, therefore, overrule the objection and direct that the name of Mt. Hasnu be struck off from the revision petition.

5. The revision petition will now come up for hearing on a date to be fixed in the next circuit.