

(12) Accordingly, the respondent-authorities are directed to re-advertise the scheme keeping in view the principles which have been elaborated above and strictly accord precedence for allotted telephone connections in accordance with the said principles. In the result, the writ petitions are allowed in the manner indicated above. However, in view of the peculiar facts of these cases, the parties are left to bear their own costs.

R.N.R.

Before : G. R. Majithia, J.

JASWANT SINGH AND ANOTHER,—Appellant

versus

AJIT SINGH AND OTHERS,—Respondents

Regular Second Appeal No. 968 of 1978

24th October, 1991.

Code of Civil Procedure, 1908 (V of 1908)—O. 22, rl. 4 sub rls. 3 to 6 as amended by the Punjab and Haryana High Court—Death of respondent during pendency of appeal—Legal representative not brought on record—Effect of—Whether appeal stands abated.

Held, that the resultant effect of the Punjab amendment is that the suit does not abate as against the deceased-defendant if his/her legal representatives are not brought on record within time prescribed and the judgment rendered will be deemed to have been pronounced as if it was rendered before the death took place meaning thereby the death of the defendant does not effect the validity of the judgment in any manner.

(Para 4)

Application under section 151 C.P.C. praying that, filing of certified copy of Annexure P/1 may kindly be dispensed with.

CIVIL MISC. NO. 2822-C of 1991:—

Application under section 151 of the Code of Civil Procedure, praying that, dispossession of the applicants/appellants from the suit land be stayed during the pendency of the Civil Misc. Application.

CIVIL MISC. NO. 2823-C of 1991:—

Application under sub-rule (5) of rule 4 of Order 22 of Code of Civil Procedure read with Section 151 C.P.C. praying that, in the

Special Circumstances of the case the abatement caused on the death of respondent No. 4—Surjit Kaur may kindly be set aside so that they may move an application for bringing on record the legal representatives of respondent No. 4; and this application may be accepted.

G. S. Doad, Advocate, for the applicants.

M. L. Saggar, Advocate, for the respondents.

JUDGMENT

G. R. Majithia, J.

This order disposes of C.M. No. 2823-C of 1991 in RSA No. 668 of 1978. In the application prayer is made for setting aside the abatement resulted on account of death of respondent No. 4 Smt. Surjit Kaur. The facts :—

(2) Kartar Singh was the last male holder of the disputed land. He died on October 4, 1973 leaving behind his widow Prem Kaur, four daughters, namely, Swarn Kaur, Charanjit Kaur, Kulwant Kaur, Surjit Kaur and 5 sons, namely, Balwant Singh, Ajit Singh, Sohan Singh, Jaswant Singh and Jagdish Singh. Swarn Kaur, Charanjit Kaur, Surjit Kaur daughters and Jagdish Singh, Balwant Singh and Ajit Singh sons filed a suit for joint possession of the estate of their deceased father Kartar Singh against their brothers Sohan Singh, Jaswant Singh and sister Kulwant Kaur. The suit was contested by brothers Sohan Singh and Jaswant Singh on the basis of will allegedly executed on June 19, 1963 by their late father in their favour.

(3) The trial Judge dismissed the suit. But on appeal, the first appellate Court, reversed the judgment and decree of the trial Court and decreed the suit of the plaintiff. The first appellate Court found that the will was not the result of free will of the testator and that it was unnatural since under the will all the natural heirs, except two sons beneficiaries under the will were excluded. Jaswant Singh and Sohan Singh, the alleged sole heirs under the will challenged the judgment and decree of the first appellate Court in Regular Second Appeal No. 968 of 1978 in this Court. The same was dismissed by judgment dated May 8, 1980. The alleged beneficiaries assailed the judgment of this Court in Civil Appeal No. 1598 of 1981 in the Apex Court. When the appeal came up for hearing, on the representation of the appellants, the same was dismissed as withdrawn with the following observations :—

“The appellants want to move the High Court for setting aside the order of abatement in respect of Surjit Kaur, the respondent No. 4, Civil Appeal is dismissed as withdrawn.

The appellants are permitted to move the High Court for appropriate order. If such an application is made, the High Court will consider the same and give appropriate relief."

(4) Pursuant to this order, an application has been moved. It is stated therein that Surjit Kaur was arrayed as respondent No. 4 in the Regular Second Appeal. She died on June 9, 1979, her legal representatives were not brought on record within the time prescribed and the appeal in this Court stood abated. The submission is devoid of merit for the following reasons :—

- (i) In Order 22, rule 4, sub-rule (3), Punjab and Haryana High Court made the following amendment published in Haryana Government Gazette dated 25th March, 1975 :—

"Where within the time limited by law no application is made under sub-rule (1) the suit shall not abate as against the deceased-defendant and judgment be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place."

In Order 22, in rule 4, the following sub-rules (4), (5) and (6) were inserted and these read thus :—

"If a decree has been passed against a deceased-defendant a person claiming to be his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware of the suit or that he had not intentionally failed to make an application to bring himself on the record, the Court shall set aside the decree upon such terms as to costs or otherwise as it thinks fit.

- (5) Before setting aside the decree under sub-rule (4) the Court must be satisfied *prima facie* that had the legal representative been on the record a different result might have been reached in the suit.

- (6) The provisions of section 5 of the Limitation Act, 36 of 1963 shall apply to applications under sub-rule (4)."

After this amendment, the suit shall not abate as against the deceased defendant if no application is moved to bring on record his or her legal representatives. The judgment pronounced in the *lis* shall have the same force and effect as if it has been pronounced before the death took place. The resultant effect of the Punjab amendment is that the suit does not abate as against the deceased-defendant if his/her legal representatives are not brought on record within time prescribed and the judgment rendered will be deemed have been pronounced as if it was rendered before the death took place meaning thereby the death of the defendant does not effect the validity of the judgment in any manner.

(2) The appeal filed by the applicant/appellants was dismissed by this Court and they cannot draw any benefit even if the appeal stood abated as against the deceased Surjit Kaur.

(3) Surjit Kaur was their sister. It is unbelievable that the brothers were not aware of the death of their sister. No explanation is forthcoming why steps were not taken by them to bring on record the legal representatives of the deceased within time, during the pendency of the Second Appeal.

(4) The deceased was not put to any disadvantage because the judgment and decree of the first appellate Court was affirmed in her favour. The plea of abatement, if any, could only be taken by her legal representatives but her legal representatives have not intervened to object that the appeal in this Court had abated.

(5) In view of sub-rule (4) as inserted in rule 4 of Order 22, it was for the legal representatives of the deceased to apply for setting aside of the decree if they were aggrieved against it. The resultant effect of the provisions of sub-rule (4) is that even if a decree is passed against a deceased, his legal representatives can move the Court for setting aside the decree and it is further enjoined upon them to establish that they have not intentionally failed to bring themselves on record as legal representatives within time. The reading of these rules leads to irresistible conclusion that the legal representatives of the deceased can only object to the decree passed against the deceased and they have to satisfy that they have not intentionally failed to make an application to bring themselves on record within time. The applicant/appellants who have lost in First appeal and Second Appeal cannot urge that the suit or appeal stood abated as a result of death of the deceased defendant/respondent. The validity of sub-rules (3), (4) and (5) inserted in rule 4 of Order 22 CPC was assailed on the

ground that these were inconsistent with the provisions of the Code as amended by Civil Procedure Code (Amendment) Act, 1976. The validity of the rules was upheld by a Full Bench of this Court in *Smt. Chand Kaur v. Jang Singh and others* (1), and it was held thus :—

“For the aforesaid reasons, sub-rule (3) to R. 4 of O. 22 of the Code substituted by this Court on March 25, 1975, is not inconsistent with the provisions of the Code as amended by the Amendment Act and consequently does not stand repealed. Therefore, the application has no merit and is liable to be dismissed. I order accordingly. The matter may now be listed before the learned Single Judge for deciding regular appeal.”

It is too late for the applicants to urge that the appeal stood abated. Moreover, this objection is no more tenable in view of the amendment made by this Court. In view of the substitution and addition made by this Court as referred to above, the application is dismissed. The application have succeeded in thwarting the attempt of the decree-holders to obtain possession of the disputed land for more than 18 years after the death of their father. Because of the close relation between the parties. I am not awarding costs of the application to the respondents. Otherwise, the conduct of the applicants for raising false and frivolous objections, deserves to be deprecated and heavy costs ought to be awarded against them.

S.C.K.

Before : M. R. Agnihotri & N. K. Sodhi, JJ.

DARSHAN SINGH MOHI,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 12317 of 1991

4th December, 1991.

Punjab Civil Service (Executive Branch) Rules, 1930 RI 10.—
Constitution of India, 1950—Arts. 226 & 356—Nominations to P.C.S.
