



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
RSA No. 28 of 2023
Decided on: 28.11.2023

Sobha Ram (deceased) through LRs & Ors.

.....Appellants

Versus

Chandermani & Ors.

.....Respondents

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting?*

For the appellants:

Mr. Devender K. Sharma,
Advocate.

For the respondents:

Mr. G.R. Palsra, Advocate, for
respondents No. 6, 9, 17(i) to
17(ii), 31 & 33.

Name of respondents No. 24, 27 &
28 stand deleted.

Sushil Kukreja, Judge (oral)

By way of instant appeal, the appellants, who were the plaintiffs before the learned trial Court, had laid challenge to the judgment and decree, dated 30.11.2022, passed by learned Additional District Judge-1, Mandi, District Mandi, H.P., in Civil Appeal No. 40/2014, whereby the appeal filed by the plaintiffs/appellants, was dismissed and judgment and decree passed by the learned trial Court was upheld.

2. The perusal of the record reveals that respondent No. 10, Sevak Ram has expired on 22.12.2016, respondent No.

¹ *Whether reporters of Local Papers may be allowed to see the judgment? yes*

11 Relu Ram has expired on 20.06.2015, respondent No. 19 Sadanand has expired on 17.09.2017 and respondent No. 22 Bimla Devi has expired on 22.01.2011, whereas, the impugned judgment and decree was passed by the learned lower Appellate Court on 30.11.2022. The appeal, therefore, has been dismissed by the learned first Appellate Court without taking note of their death, vide judgment and decree impugned before this Court in the present appeal. The impugned judgment, therefore, admittedly is against the dead persons, i.e., respondents No. 10, 11, 19 and 22. There is no quarrel so as to the fact that respondents No. 10, 11, 19 and 22 have expired well before the decision in the appeal by the learned first Appellate Court. No doubt, application, i.e. CMP No. 10311 of 2023, for exemption from bringing on record the legal heirs of the aforesaid respondents has been filed in the present appeal, however, the question of substitution of their legal heirs and the question as to whether the appeal on their death stands abated, for want of consequential steps, are the questions to be gone into and determined by learned first Appellate Court.

3. It is settled proposition of law that where a party dies in a pending suit/appeal and judgment/decree is passed in ignorance to such death, the question of substitution of his/her

legal heirs and setting aside the abatement, if any, can only be considered by the Court, before whom the suit/appeal was pending at that time.

4. In **Jagan Nath and others** versus **Smt. Ishwari Devi**, 1988 (2) Shimla Law Cases 273, it has been held that the question of substitution of legal representatives of a deceased party and the abatement of the suit/appeal for want of consequential steps has to be decided by that very Court where at the time of death of such party, the lis was pending. Paragraph 6 of the aforesaid judgment reads as under:-

“6. The fact that one of the several defendant-appellants against whom an indivisible decree was passed by the trial Court, had died during the pendency of the appeal before the lower appellate court, and steps to bring his legal representatives on the record of the appeal had not been taken within the prescribed period, being undisputed, it must be held that the appeal had already abated prior to the decision of the lower appellate court dated April 9, 1987. The decree of the lower appellate court was thus a nullity as it had been passed also against a dead person. The legal position is not in dispute. What is the course which should normally be adopted in a situation like this, has been succinctly stated in the decision of the Calcutta High Court in Kanailal’s case (supra). It was observed by the Division Bench, after noticing the decisions of various High Courts and the Supreme Court, that:

..... In such circumstances, in our opinion the uniform procedure followed by the other High Courts as referred to hereinbefore should be accepted, namely, the ineffective decree passed

by the court of appeal below should be set aside and the appeal should be remanded to the said court, keeping it open to the appellants to move the said court for an opportunity to have the abatement set aside if the appellants could satisfy the said court that they are so entitled in law.....

I am in entire agreement with the aforesaid observations.”

5. Further in ***Karam Chand and others*** versus ***Bakshi Ram and others***, 2002 (1) Shimla Law Cases 9, it has again been held that as and when the questions with respect to substitution of legal heirs of deceased party and abatement of the suit or appeal for want of consequential steps, arise in relation to a suit or appeal, these are to be decided by the Court in which the suit or appeal was pending at the time of the death of the party. Relevant paragraphs of the aforesaid judgment read as under:

"4. In the given circumstances of the case, one or the questions which arises for determination is as to the effect of death of Pohlo Ram and not bring on record his legal representatives in the appeal before the lower appellate Court or in other words, the questions now involved in the matter are as follows:

(i) Whether the appeal before the lower appellate Court had abated, if so the effect and extent of the abatement;

(ii) Whether the abatement should be set aside or not; and

(iii) Whether the legal representatives of the deceased may be allowed to be brought on record or not?

5. It is well settled that as and when the questions, as aforesaid, arise in relation to a suit or appeal, at

the first instance, these are to be decided by the Court in which the suit or appeal was pending at the time of the death of the party and abatement, if any, took place”

6. Similarly, the apex Court in ***Kishun @ Ram Kishun*** versus ***Bihari***, AIR 2005 Supreme Court 3799, has held that a judgment against or in favour of a dead person is nullity.

7. In the present case, respondents No. 10, 11, 19 and 22 died before the decision rendered by the learned first Appellate Court, hence the question of substitution of their legal heirs and setting aside the abatement, if any, was to be decided by the same Court, where at the time of death of the party, the suit or appeal was pending. Accordingly, the impugned judgment and decree dated 30.11.2022, passed by the learned Additional District Judge-1, Mandi, District Mandi, H.P. are set aside and the case is remanded back to the learned first Appellate Court with a direction to decide the question of substitution of legal representatives of respondent No. 10, 11, 19 and 22 and setting aside the abatement, if any, after affording due opportunity of being heard to the parties and thereafter dispose of the appeal afresh strictly in accordance with law. The parties through learned counsel representing them are directed to appear before learned first Appellate Court on **27th December, 2023**. Records be sent back forthwith.

8. The appeal, as also pending application(s), if any, stands disposed of accordingly.

**(Sushil Kukreja)
Judge**

November 28, 2023
(raman)

High Court of MP