
(1970) 10 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 3 of 1968

Bachan Ram and Others

APPELLANT

Vs

The Gram Panchayat Jonda and Others

RESPONDENT

Date of Decision : 19-10-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 11, Order 22 Rule 3, Order 22 Rule 9
Limitation Act, 1963 — Article 121

Citation : AIR 1971 P&H 243

Hon'ble Judges : C.G. Suri, J

Bench : Single Bench

Advocate : Mohinder Singh Dhillon, for the Appellant; Daljit Singh Chahl, for the Respondent

Judgement

1. Harchand Singh deceased along with 8 other plaintiffs had filed an appeal against the dismissal by the trial Court of their suit for a declaration that the plaintiffs were all in separate possessions as co-shares of different parcels of the shamilat land of their village and that these lands had not vested in the Gram Panchayat defendant-respondent No. 1 under the Punjab Village Common Lads (Regulation) 1967 sometime after the filing of that appeal and no body applied within the period of 90 days allowed by Art. 120 of the Limitation Act of 1963 for impleading his legal representatives. It was on 29-5-1967 that Bachna Ram, one of the plaintiff-appellants, filed an application that the deceased's widow and children may be brought on record as his legal representatives. It was alleged, inter alia, in that application that Harchand Singh had died only about 21/2 months earlier. This averment was found by the lower appellate Court to be false and the appeal was found to have partially abated only in so far as the land in possession of Harchand Singh was concerned. By the same order, the lower appellate Court accepted the appeal of the other 8 plaintiffs and remanded the case to the trial Court for decision on merits.

2. The surviving plaintiffs as also the legal representatives of Harchand Singh deceased have filed this second appeal against the order of the Court of first appeal holding that the appeal had partially abated in respect of Harchand Singh's land. It is the contention of the learned counsel for the appellants. Shri Dhillon, that the application for impleading the legal representatives of Harchand Singh had been made while the period of limitation of 60 days provided by Art. 121 of the Limitation Act 1963 had not expired and that the application should have been treated by the lower appellate Court as an application for setting aside of the abatement which had automatically taken effect on the expiry of the period of 90 days allowed by Art. 120, *ibid*. In support of this contention Shri Dhillon has relied upon *Kirpa Ram v. Bhagat Chand* AIR 1928 Lah 746 which had followed two earlier decisions in *Badlu v. Mt. Naraini* AIR 1924 Lah 424 and *Ata-ur Rahman v. Mashkur-un-Nisa* AIR 1926 Lah 474. It was held that an application made to bring the legal representatives of the deceased-defendant on record after the time prescribed therefore by law should ordinarily be treated as an application to set aside the abatement of the suit which has taken place even though it is not asserted that the delay was due to any reasonable cause. The evidence about the sufficient cause for the delay can be produced in the appellate Court and all that is necessary is that the Court should feel satisfied that discretion should be exercised in favour of the party seeking the setting aside of the abatement.

3. Hardev Singh, the eldest son of the deceased has filed an affidavit in this Court that his father had not told his family members that he along with others had filed any appeal or that it was pending in any Court. This is given as the reason why the legal representatives of the deceased had not been able to file any application in time. Even though the individual interests of the nine plaintiffs in the proceedings were distinct and separate it cannot be said that all nine of them were actively prosecuting the litigation. The active prosecution of the suit or the appeal could have been left to one or more of the plaintiffs. It may appear significant that even the belated application under Order 22, Rule 4 had been made in this case by Bachna Ram plaintiff and not by the widow and children of the deceased. It may, therefore, appear that Bachna Ram was the one who had been actively prosecuting the proceedings on behalf of other plaintiffs. Luckily for the legal representatives of Harchand Singh the further period of 60 days allowed by Art. 121 had not expired when an application under Order 22 had been made by some of the plaintiffs.

4. I, therefore, accept the appeal. The order of abatement of the suit and the appeal, so far as Harchand Singh deceased and his legal representatives are concerned, is set aside. The parties are directed to appear before the lower appellate Court (District Judge, Sangrur) on 16-11-1970 for further proceedings. It shall be necessary for the lower appellate Court to set aside the dismissal of the suit in respect of the land which was in possession of Harchand Singh deceased before his legal representatives would be able to join the trial of the case.

There is no order as to costs in this Court.

5. Appeal allowed.