

(2005) 03 AHC CK 0057

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18557 of 2005

Banarasi

APPELLANT

Vs

Smt. Savitri Upadhyay and Others

RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (2005) 2 AWC 2042 : (2005) 1 RD 636

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : R.P. Ram, for the Appellant; C.K. Parekh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard Sri R.P. Ram learned counsel for petitioner and Sri C.K.Parekh learned counsel for respondent no.4.

2. Smt. Savitri Upadhyay respondent no. I and respondent nos. 2 to 7 filed a suit u/s 229B of U.P.Z.A.L.R. Act being Suit No.9/26/03. In the said suit there were several defendants including petitioner. Unfortunately when the suit was filed, defendant nos. 2,3 and 5 were already dead. Petitioner who was ore of the defendants in the said suit filed an application for dismissal of the suit on the ground that it was filed against some dead persons. "Thereafter plaintiff filed application for substitution. In fact the application was for impleadment of the legal representatives of deceased defendants. The application was allowed and recall application against that order was also dismissed, hence, two revisions were filed being revision no. 36/04 and 39/04. Learned Add, Commissioner (Admn.) Varanasi Division, Varanasi through judgment dated 6.1.05 has dismissed both the revisions hence his writ petition.

3. The argument of learned counsel for petitioner is that the suit as filed, was a dead suit and it could not be resurrected or resuscitated by substitution/

impleadment. A suit may not be maintainable against only and only dead persons . However if (sic) a suit some of the defendants are alive and some dead then the suit is maintainable. The correct legal position is that the suit when filed was maintainable against those defendants who were alive at that time. The position is squarely covered by Order 1 Rule 10 C.P.C. The legal representatives of the dead persons who had wrongly been impleaded as defendants were necessary parties in the suit. Hence under Order 1 Rule 10 C.P.C. they could be brought on" record even after filing of the suit.

4. Accordingly there is no error in the impugned orders. Writ petition is dismissed.