

(1977) 11 PAT CK 0002
In the Patna High Court
Case No : Civil Revision No. 367 of 1977

Bibi Asma Shah

APPELLANT

Vs

Suresh Prasad and Others

RESPONDENT

Date of Decision : 28-11-1977

Acts Referred:

Limitation Act, 1963 — Section 14, 22, 5

Citation : (1978) 26 BLJR 552

Hon'ble Judges : H.L. Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hari Lal Agrawal, J.—The sole question that falls for decision in this case is as to whether the trial court committed any error of jurisdiction in allowing addition of the heirs and legal representatives of one Syed Hussain Ahmad, the sole defendant, against whom the title suit in question was instituted, who, as transpired later on, was already dead on the date of the institution of the suit, i.e. on 25-11-1969.

2. It appears that the plaintiff on becoming aware of the fact of the death of the said defendant, made an application 5-6-1970 for expunging his name and adding his heirs and legal representatives, namely, the petitioner (a daughter), his widow and a son. It is not disputed that on that date, i.e. 5-6-1970, the cause of action for the suit in question against the added legal representatives of the deceased on the original defendant was not barred by limitation.

3. Much thereafter, an application was filed on 6-1-1977, on behalf of the defendants that the original suit having been instituted against a dead person, the suit was a nullity and the order of substitution passed by the court was without jurisdiction. The learned Munsif has over-ruled the objection and accordingly the petitioner being one of the added defendants has come to this court.

4. Mr. Asghar Hussain appearing in support of this petition advanced the same argument as in the court below and contended that the learned Munsif has committed an apparent error of jurisdiction by passing the order of substitution when the suit was filed against a defendant who was already dead on the date of the institution of the suit.

5. Learned Counsel place reliance upon a Single Judge decision of the Madras High Court in Municipal Council Vs. Thazhel Puthan Purayil Kunhipathumma and Another, In that case, no doubt, it was held that where a plaint is filed against a person who is in fact dead at the time of presentation no application by way of amendment of bringing on record the legal representatives can be validly made because the whole proceeding is void and has no effect whatever. The fact of that case was that when the application was made by the plaintiff under Order 1, Rule 10 of the CPC for bringing the legal representatives of the deceased defendant, a fresh suit had become barred by limitation against them.

6. I find that the same High Court, later on in the case of Kannangara Ismail Vs. Palayat Kappadakkal Pavu Amma and Others, , in the circumstances very much similar to the case at hand, took a different view and held the substitution and addition of the heirs and legal representatives of the deceased defendant to be valid when the suit was found not time barred as against them on the date of the application for impleading them as defendants u/s 22 of the Limitation Act.

7. Having examined the circumstances and authorities cited above I would reject the contention of Mr. Hussain and in agreement with the learned Judge Madras High Court in Kannangara Ismail Vs. Palayat Kappadakkal Pavu Amma and Others, would hold that if a suit is instituted against a dead person and an application for bringing on the record his heirs and legal representatives is made within time, i.e., during the subsistence of the cause of action which does not stand barred by time in the meantime u/s 22 of the Limitation Act, then that suit being against a wrong person, the addition of the necessary parties in the category of the defendant would not be invalid and the suit will be deemed to be a new suit instituted against the newly added defendants on the date of the application of the plaintiff. Taking any other view in my view, is bound to work injustice as would be the position in the present case as well. Because at the time when the objection was taken by the heirs, a fresh suit had already become barred by limitation neither Section 5 nor Section 14 of the Limitation Act having any application to a suit. The plaintiff is bound to suffer irreparable loss and injury. If the plaintiff was entitled in law to bring a fresh suit against the heirs and legal representatives of the deceased defendant on the day, he discovers that the defendant was dead, that I see no justifiable reason as to why in the same suit he should not be allowed to implead the necessary parties on the record.

8. I accordingly do not find any merit in this application and would dismiss the same. In the circumstances, however, I shall direct the parties to bear their own costs.