
(1993) 04 SC CK 0090

In the Supreme Court Of India

Case No : Civil Appeal No. 862 Of 1974

Chaudhry Ram and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 15-04-1993

Acts Referred:

Citation : (1994) 3 SCC 675 Supp

Hon'ble Judges : K. Ramaswamy, J;G. N. Ray, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellants are the legal representatives of Jhanda Ram. One of the lands of him and others situated in Village Hijranwan Khud in the State of Haryana was notified for acquisition under Section 4(1) of the Land Acquisition Act (I of 1894 for short the Act) on 16/05/1957. The Land Acquisition Collector in his award dated 21/09/1958 awarded to Tal lands Rs 300 per acre. Dissatisfied therewith they sought reference under Section 18. The District Judge by his judgment dated 13/01/1960 enhanced the market value to Tal lands Rs. 500.00 per acre. Against the enhanced market value, the State filed the appeal and the claimants filed cross-objections to increase the compensation to Rs. 800.00 per acre. In this case, R.F.A. 170 of 1960 was filed by the State. Therein Jhanda Ram and his two sons and a daughter filed cross-objections. Dismissing the State appeals and allowing the cross-objections, of other appeals, by its judgment dated March 29, 1973, the High Court dismissed this appeal on the sole ground that two legal representatives of Jhanda Ram were not brought on record and that, therefore, the appeal and the cross-objection stood abated. Against the judgment of the High court, an appeal was filed with special leave granted by this court.

2. Shri S.K. Mehta, learned counsel for the appellants contended that the High court committed grievous error of law in dismissing the appeal and the cross-objection having been abated on the ground that all the legal representatives were not brought on record. Two sons and a daughter were already on record.

On account of the death of Jhanda Ram, the appeal and the cross-objection had not abated. Be as it may it was also contended that the memo was filed in the High court itself to record them as legal representatives of their father Jhanda Ram and the High court had not taken that into account on the ground that it was barred by limitation. It is resisted by the learned counsel for the State that Jhanda Ram has a specific share in the property and having died intestate the legal representatives should be brought on record within the period of limitation prescribed in that behalf. Since the legal representatives were not brought on record, as rightly found by the High court, the appeal and the cross-objection stood abated and the dismissal of the appeal and the cross-objection were valid in law.

3. Rules 3 and 4 of Order XXII of the Code of Civil Procedure provides the procedure to bring the legal representatives of the deceased plaintiffs or the defendants, the mutatis mutandis appellants and the respondents on record. Rule 4 provides that where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representatives of the deceased defendant to be made a party and shall proceed with the suit.

4. Article 120 of the Limitation Act, 1963 provides the limitation to bring the legal representative on record thus: Under the Civil Procedure Code to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party they should be brought on record within ninety days from the date of death of the plaintiff, appellant, defendant or respondent, as the case may be. Article 121 provides that if they are not so brought on record, on the expiry of 60 days, the proceedings stand abated.

5. In *State of Punjab v. Nathu Ram* this court held that the Punjab Government acquired certain parcels of land belonging to two brothers L and and the compensation was awarded. They were dissatisfied with the award, therefore, they filed the appeal. While the appeal was pending, one of the brothers L died and no application to bring the legal representatives on record had been made within the time limit. The High court dismissed the appeal holding that the appeal had abated against L and that its effect was that the appeal against N also abated. When the appeal was filed in this court challenging the legality of that order, this court held that if the court can deal with the matter in controversy so far as regards the rights and interest of the respondents, other than the deceased respondent, it has to proceed with the appeal and decide it; otherwise it will have to refuse to proceed further with the appeal and therefore dismiss it. Ordinarily, the consideration which will weigh with the court in deciding upon the question whether the entire appeal had abated or not will be whether the appeal between the appellants and the respondents other than the deceased respondent can be said to be properly constituted or can be said to have all the necessary

parties for the decision of the controversy before the court and the tests to determine this have been described thus: (a) when the success of the appeal may lead to the court's coming to a decision which will be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the court and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective that is to say it could not be successfully executed. In that case, it was found that since the interest of the brothers is joint and indivisible, the appeal against the respondents other than the deceased respondent cannot be proceeded with if the appeal against the deceased respondent had abated. In these circumstances, this court confirmed the decree of the High court holding that the interest of the land acquired being joint and inseparable between two brothers, the appeal is dismissed as the decree which had become final as against the deceased respondent would be inconsistent with the decree that may be passed as against the surviving brother. Accordingly, the appeal as a whole stood abated. This view was reiterated by this court in *Ramdass v. Deputy Director of Consolidation, Ballia*. In para 3, this Court held that an objection was raised on behalf of the contesting respondents that all the legal representatives of Sheo Tahal, who had been impleaded as a respondent but who had died, had not been impleaded. An application was filed in that behalf and the legal representatives of the deceased were already on record, the name of the third legal representative could certainly be brought on record. It was held that the appeal was not abated as against all the persons since two of them were already on record.

6. *Mahabir Prasad v. Jage Ram* is a case directly on the point. If the legal representatives sought to be brought on record were already substituted as party respondents to the appeal, this court held that there is no need to make an application to substitute the legal representatives on record. Therefore, there was no abatement.

7. In this case, it is seen that since two sons and a daughter of the deceased father were already before the court in the appeal and they jointly filed cross-objections. The object of bringing the legal representatives on record under Order XXII Rule 4 of the respondent is to have the estate of the deceased represented in the appeal. In these circumstances, it is not necessary that all the legal representatives should necessarily be brought on record. Two sons and a daughter are already on record, the omission to bring the legal representatives of the deceased namely the other sons and the daughters is not fatal. The estate of the deceased is sufficiently represented. The first limb of Order XXII Rule 4 that the right to continue the proceedings survive to the surviving sons and daughters on record. The interest is divisible and separable. We hold that the appeal and the cross-objection were not abated and the High court committed an

error of law in coming to the contrary conclusion. Since the cross-objections in other appeals allowed against other claimants had already become final, it is not a fit case to remand the matter to the High court for decision on merits. Accordingly the appeal filed by the State is dismissed and the cross-objection filed by the appellants stand allowed and they are entitled to market value Rs 700 per acre and they are also entitled to statutory benefits. The appeal is accordingly allowed. No costs.