
(1961) 11 MP CK 0010
In the Madhya Pradesh High Court
Case No : First Appeal No. 21 of 1956

Chhaganlal Hiralal

APPELLANT

Vs

Firm Swaroopchand Hukumchand and Others

RESPONDENT

Date of Decision : 09-11-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63, Order 22 Rule 1, Order 22 Rule 11, Order 22 Rule 2, Order 22 Rule 3

Citation : AIR 1962 MP 305 : (1962) 7 MPLJ 470

Hon'ble Judges : S.P. Bhargava, J;H.R. Krishnan, J

Bench : Division Bench

Advocate : S.M. Kutumbale and S.L. Dubey, for the Appellant; R.K. Vijayavargi, for the Respondent

Final Decision : Dismissed

Judgement

Krishnan, J.

This is an appeal by the unsuccessful claimant, from the judgment and decree of dismissal, of his suit under Order 21, Rule 63, regarding property attached before judgment in a suit by the respondent No. 1 against defendants of whom the present Respondents Nos. 2 and 3 are the Legal Representatives. At this stage the question is whether the appeal has abated. The position is that the present respondents are both dead, one having died on 4-3-1959 and the other (Ramsakhibai) in May 1961; the latter herself being one of the legal representatives of Mohanlal, original defendant No. 1, who died long ago. The plaintiff in the original suit, who is respondent No. 1, also died in February 1959. The appeal is on the face of it abated, but the appellant has urged, firstly, that in a claim-suit of this nature, the defendants in the original suit are not necessary parties; it can proceed in their absence, as one between the claimants on the one hand, and the attaching plaintiff on the other. If it were a case of attachment in execution, the position regarding the judgment-debtor and the decree-holder would be the same. Secondly, in regard to the death of respondent No. 1 Sir

Seth Hukumchand, the argument is that there is really no abatement because the original suit was brought by "Messrs. Swarupchand Hukumchand a Hindu joint family firm through Sir Seth Swarupchand Hukumchand, the Karta".

For one thing, a local amendment in force at the time of the suit No. 7 of 1947 in the State of Indore, enabled the joint family firm to sue in its own name under Order 30 Rule 1, C. P. C. and for another, even the claimant's suit against the joint family firm was proper under Order 30, Rule 10. Though Sir Seth Hukumchand, the Karta at that time of the joint Hindu family firm, died in February 1959, the firm as such continues to be alive and a substitution needed is only of the new Karta. Case law has been cited, and the one reported in, *Shop of Bhai Ganeshram Balbhadra v. Firm Mangilal Balkisan* AIR 1952 Nag 390, is sought to be distinguished with reference to the facts of the instant case. There is the additional prayer that in the event of this court holding that the said ruling applied, a reference might be made to a fuller Bench for reconsideration of the principles.

The facts are simple. In 1947, the joint Hindu family firm Messrs. Swarupchand Hukumchand, as it styled itself, through their Karta (named) brought a suit against Mohanlal Gupta and Badrinarayan Gupta and attached certain properties before judgment. The present appellant put in a claim-case and on its rejection, filed a suit in October 1950, by which time the CPC of India had become the law in stead of the Indore, C. P. C. That suit itself being dismissed In 1955, the claimant-plaintiff filed the present appeal. As already noted, the respondents tied on different dates mentioned.

Ground No. 1: There is good authority to the effect that in a claim-suit, the defendants or the judgment-debtors as the case may be in the original suit or execution proceedings, in which the attachment is made, are not necessary parties. If they are impleaded as proper parties, the finding binds them; but if they are not, the matter rests entirely as between the plaintiff or the decree-holder, as the case may be in the original suit or execution proceedings, and the claimant who brings the suit under Order 21 Rule 63, C. P. C. The attaching party would be describing the property as one belonging to the defendant or the judgment-debtor, and the claimant would be seeking to establish his claim against both, the decree-holder or the plaintiff, and also the judgment-debtor or the defendant as the case may be.

But It may happen as it has in this case that the defendant or the judgment-debtor keeps out of the picture altogether, leaving the issue as one between the unsuccessful claimant on the one hand and the attaching party on the other. Then it is quite possible for a court to decide the issue as between the unsuccessful claimant and the attaching party. Thus in *Suppan Asari Vs. Alima Bibi and Others*, it was held :

"In a suit by the claimant under Order 21, Rule 63, the judgment-debtor is not a necessary party."

The case, Smt. Radharani Dassi Vs. Smt. Binodamoyee Dassi and Others, arose out of a suit by the decree-holder from an order allowing the claim by a third party. It was held that the decree-holder could file a suit against a successful claimant without necessarily impleading the judgment-debtor as the order allowing the claim was really one against him and it was open to him to establish in the suit, his right to attach the property. Certainly the decision would not bind the judgment-debtor who is not impleaded but that is another matter. Also in the Full Bench case reported in M. Chimpiramma v. Pabbiseti, (S) AIR 1957 Andh Pra 61.

"It may be taken as settled law and also consistent with practice that a judgment-debtor need not be made a party to a claim proceedings in which case, the Court decides only the right of the decree-holder to bring the property, to sale against the claim of the claimant's right to have the property released. Such an order would not obviously bar the judgment-debtor who was not a party to the proceedings. It is equally settled that a judgment-debtor can also be made a party to such a proceeding and in that event it would be binding on him and preclude him from setting up his claim unless he gets the said order set aside in a suit filed under Order 21 Rule 63, CPC within the time prescribed."

Thus the death of the defendant-respondents does not affect the claimant-appellant's right to pursue the appeal against the plaintiff-respondent No. 1. In that respect there is no abatement.

Ground No. 2: The result of the death of the attaching party, the plaintiff, in the original suit is quite different. The appellant has tried to show, that the addition in the cause-title of the suit of the name of the Karta, of the firm is only a superfluity, as the firm is the plaintiff and not the Karta. From that he follows by a second argument that the death of Karta, whose mention is mere surplusage, does not lead to abatement of the suit as the real plaintiff the joint family firm is on the record all the time. The impleading of the new Karta is purely for the sake of bringing in a person who would normally answer for the firm and is not a substitution of the legal representative. Then he deals with the correctness of the procedure by which the joint Hindu Family firm was suing in. 1947 and was being sued in claim-suit in 1947.

Finally, he urges that in the case reported in AIR 1952 Nag 390, the position was materially different, there the plaintiff being the Karta himself on behalf of the joint Hindu family, while here it is the Joint Hindu Family firm, the Karta's name in the cause-title being really a superfluity Ingenious as this argument is, it fails for more than one reason. In certain cases, it has been held that name of a partner or of a member in the cause-title of a suit by firm or a Joint Hindu Family brought, under Order 30, is a surplusage; that was not apropos any abatement. In them, Ram Kumar Ram Chandra Vs. The Dominion of India, , Mohammad Ali Kunju v. Abraham George AIR 1953 Trav Co. 209, and R.J. Mohammed Yakub Saheb Vs. Dipa Sahu Deoki Prasad and Others, , the question was in regard to the propriety of the suit in that particular name and form in the light of Order 30.

These, therefore, give no help in answering the question before us, as to the effect of the death of the Karta who has brought the suit. For that the principles have been laid down in AIR 1952 Nag 390.

A comparison shows that there is no feature distinguishing it from the instant case. There also the suit was by a Joint Hindu Family business in the assumed name of Bhai Ganeshram Balbhadra through Balbhadra, who died while it was pending. At that stage the question was not whether the suit had been properly filed in accordance with the Order 30, Rule 10 but whether the death of the Karta, who was actually suing in the assumed name of the firm led to abatement;

"A suit by or against a joint Hindu Mitahshara Family may be conducted or defended as the case may be by the Karta alone in a representative capacity or by all the members of the family being impleaded. If the Karta alone is on the record, in the event of his death substitution has got to be made within the time, limited by law either of the succeeding Karta in his representative capacity or of all the surviving members of the family. But in each case the application has to be one for substitution.....Otherwise, the suit or the appeal as the case may be will abate."

This judgment has set out and examined all the case-law upto that date. No later ruling either of this Court or of the Supreme Court has been placed by the appellant to persuade us that this position stated by the Division Bench calls for re-examination by a fuller Bench.

The result is that the appeal has abated in toto and is accordingly dismissed. The appellant shall bear his own costs; no costs or pleaders fees have been incurred by the respondents as such.