

(2002) 09 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : CMP (C) No. 4/95 in CIA No. 53/94

Collector Land Acquisition and Another

APPELLANT

Vs

Dhani Ram and Others

RESPONDENT

Date of Decision : 23-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 4

Jammu and Kashmir Limitation Act, 1995 — Section 22

Land Acquisition Act, 1894 — Section 18

Citation : (2004) 3 JKJ 562

Hon'ble Judges : B.L. Bhat, J

Bench : Single Bench

Advocate : J.P. Singh, for the Appellant; R.S. Thakur, for the Respondent

Judgement

B.L. Bhat, J.—Through the medium of this Civil Miscellaneous petition, appellants have sought indulgence of the court for leave to amend

the memorandum of Civil Appeal No. 53/94 by impleading the legal representatives of deceased Soba Ram and Daya Ram, the respondents No.

2 and 3. It is inter-alia maintained in the petition that during the course of effecting service of notice in the said appeal, the petitioner-appellant No.

2 on enquiry learnt that respondent No. 2 had died on 25.11.1991 and respondent No. 3 had died on 17.5.1987 respectively that is to say during

the proceedings pending before the District Judge, Udhampur and no steps have been taken either by the legal representatives of the said

respondents to be brought on record not the Advocate appearing on behalf of these deceased-respondents had intimated the court about their

death and under these circumstances the death of aforesaid respondents could not be known either to the reference court or to the appellants. That

the appellants learnt about the death of said respondents No. 2 and 3 only in the first week of February 1995 and present application in hand has

been filled without any loss of time.

2. The respondents through their counsel have resisted the petition by filing their written objections stating therein inter-alia that the

appellants/applicants on their own showing admit that at the time of filing of appeal, the respondents Soba Ram and Daya Ram were dead, as such

appeal is incompetent. That the appeal having been directed against the judgement and decree dated 15.7.1994 recorded by the District Judge,

Udhampur was barred by the time at the time of the presentation of the application which appears to have been filed in the month of March 1995

as against the persons sought to be arrayed as parties. That the cause being joint and indivisible, the appeal therefore, abates; that the reference

proceedings under the settled law could be taken to its logical conclusion despite the presence or otherwise of any party.

3. Considered the rival contentions of the learned counsel for the parties.

4. It appears that land measuring 264 kanals 9 marlas and land measuring about 84 kanals and 5 marlas both located at village Salal Surman Tehsil

Reasi came to be acquired under the Land Acquisition Act (hereinafter referred to as Act) by virtue of Award No. SLA/67-70 dated 26.6.1983

and Award No. SLA-332-36 dated 20.1.1994 and total compensation of Rs 5,63,941.49 and an amount of Rs. 12247.47 respectively came to

be awarded as compensation to the land owners, but the respondents land owners were not satisfied with the award as a result of which they

approached the Collector-appellant u/s 18 of the Act for making reference to the District court, who in turn made the reference to the learned

District Judge, Udhampur. The learned District Judge, Udhampur after inviting objections of the parties and after framing the issues and the

recording the evidence of the petitioners and their witnesses, when appellants did not lead any evidence in rebuttal and after discussion of the

evidence came to pass impugned award by virtue of judgement dated 15.7.1994, wherein, he came to award compensation of Rs @ Rs. 6000/-

per Kanal for irrigated land, Rs. 5000/- per kanal for khushki land inclusive of Waryal Awal, Rs 2000/- per kanal for Banjar Qadim and Rs

1000/- per kandal for Gair Mumkin and came to hold the petitioners entitled to

compensation on the said enhanced rate including the costs of fruit bearing and non-fruit bearing trees etc. which shall be assessed by PWD in accordance with the revised rates of 1982; Costs of fruit bearing trees shall be assessed by the Horticulture Department and all other trees by the Forest Department respectively with a further direction that enhanced compensation shall be paid from the date of taking over possession of said land and the solatium on the enhanced compensation to be paid within three months from the date of said order failing which it shall carry 12% interest till the amount is deposited. It further appears that during the proceedings pending before the learned Reference court, the claimants namely, Soba Ram and Daya Ram respondents No. 2 and 3 in this appeal expired during the proceedings before the learned Reference court.

5. The contention of Mr. J.P. Singh, Senior Advocate appearing on behalf of the appellants is that during the pendency of reference proceedings, respondents No. 2 and 3 died and this fact was never brought to the knowledge of reference court by the Advocate representing the said deceased-respondents before the Reference court. When under Order 22 Rule-10 CPC, he was under a legal obligation to inform their death. It is after filing of the appeal against the impugned judgement and award when the notices were issued in the appeal and sent to respondents under registered postal covers alongwith Ads, the Ads of respondents Soba ram and Daya Ram were not received back in the Registry of this court. The appellants after making enquiry in this behalf learnt that said respondents Soba Ram and Daya Ram have expired in the year 1991 and 1987 respectively during the proceedings before the Reference court. No negligence in the matter can be attributed to the applicants. His further argument is that if the appellants would have earlier known about the death of the deceased-respondents, he would have arrayed their legal representatives as respondents in the appeal. Therefore, leave to amend the appeal may be granted in impleading the legal representatives of the deceased-respondents as party-respondents in the appeal with further direction that their impleadment may be deemed from the date of the presentation of the appeal. In this behalf he has placed reliance on the judgement of apex court titled as Karuppaswamy and Others Vs. C. Ramamurthy, . I have gone through this judgement of the apex court. In this

case the apex court while discussing the implication of O.I R-10 CPC

read with proviso to section 21(1) of Central Limitation Act, 1963 after making comparative study of section 22 of the Central Limitation Act,

1908 and section 21 of the amended Central Limitation Act, 1963 have held as under:-

The proviso to Section 21(1) permits correction of errors which have been committed due to a mistake made in good faith but only when the

court permits correction of such mistake. In that event its effect is not to begin from the date on which the application for purpose was made, or

from the date of permission but from the date of the suit, deeming it to have been correctly instituted on an earlier date than the date of making the

application. The proviso to sub-section (1) of Section 21 is obviously in line with the spirit and thought of some other provisions in Part-III of the

Act such as section 14 providing exclusion of time of proceeding bona-fide in court without jurisdiction, when computing the period of limitation for

any suit, and Section 17(1) providing a different period of limitation starting when discovering a fraud or mistake instead of the commission of fraud

or mistake. While invoking the beneficent proviso to sub-section (1) of Section 21 an averment that a mistake was made in good faith by

impleading a dead defendant in the suit should be made and the court must on proof be satisfied that the motion to include the right defendant by

substitution or addition was just and proper, the mistake having occurred in good faith. The court's satisfaction alone breathes life in the suit.

The plaintiff filled a suit against a person not knowing that he had died 6 weeks prior to filing of the suit. The plaintiff became aware of the

defendant's death only from remarks on the returned summons. Immediately thereafter he filed an application under Order 22 Rule 4 for

impleading legal representatives of the dead defendant. The trial court did not attribute any neglect or contumacy to the conduct of the plaintiff. It

was rather observed that the plaintiff could have known the date of the death of the defendant only by the counter filed to plaintiffs application

under Order 22 Rule 4 CPC. Normally, if he had known about the date of death of the defendant, he would have filed the suit in the first instance

against his heirs and legal representatives. The High Court too recorded a finding that there was nothing to show that the plaintiff was aware of the

death of the defendant and yet knowing well about it, he would persist in filing the suit against a dead person. Held that since the plaintiff had taken

prompt action and had acted in good faith, the proviso to Section 21(1) could be invoked in his favour and LRS of the deceased defendant could

be impleaded.

5. Unfortunately, this authority does not help the appellants because Section 22 of the State Limitation Act which corresponds to section 22 of the

Central Limitation Act, 1908 has not been amended and proviso to section 21 sub-section (1) of the Central Limitation Act, 1963 has not been

incorporated in the said section of the Jammu and Kashmir Limitation Act, 1995. Similar question as to whether suit is filed against a dead person,

can the plaintiff be allowed subsequently to amend the plaint and substitute his legal representatives in place of deceased-respondents fell for

consideration before the Division Bench of this court in a case titled as Ali Mohd. Khan Vs. Vijay Tulsi, wherein their lordships Dr. A. S. Anand,

(the Chief Justice of this court as his lordship then was) after relying on Seth Hiralal Patni Vs. Sri Kali Nath, speaking for the Bench has opined:

....where a suit is filed against a dead person it is a nullity; and plaintiff cannot be allowed subsequently to amend the suit and substitute the legal

representatives in place of the deceased....

6. As indicated in the instant case, the appellants seek leave to amend the appeal by substituting the legal representatives of deceased-respondents

No. 2 and 3 who have expired a couple of years before the presentation of the appeal, viz; after the period of limitation prescribed in the Limitation

Act, since u/s 141 CPC, the appeal is continuation of suit, therefore, the aforesaid Authority is applicable in this case with full force.

7. This takes me to the last limb of argument of Mr. Singh, Senior Advocate that respondents No. 2 and 3 the claimants have died during the

proceedings before the reference court, therefore, the proceedings shall be deemed to have been abated before the reference court because their

legal representatives have failed to bring themselves on record in the said proceedings. I am unable to agree with this argument of the learned

counsel because when once reference u/s 18 of the Act is made before the District Court, it has to bring it to its logical conclusion by making an

award even if the person at whose instance reference is made fails to appear or

fails to produce evidence in support of his claim or in case of his death his legal representatives fail to bring themselves on record because the provisions under Order 1 Rule 10 and Order 22 Rule 4 and 9 CPC do not apply to the proceedings because section 151 of the Act states notwithstanding the fact that section 151 of the Act the provisions of CPC shall apply to all proceedings under the Act provided they are not inconsistent to the Act. Order IX or Order XXII of CPC are on inconsistent with the very nature and scope of proceedings u/s 18, therefore, these provisions cannot be made applicable to the proceedings under the Act.

Bhadar Munda and Another Vs. Dhuchua Oraon, .

8. Viewed thus, prayer for leave to amend the memorandum of appeal by substituting the legal representatives of deceased-respondents Soba

Ram and Daya Ram in their respective places in the memorandum of appeal is not sustainable and the same is rejected as consequence, whereof,

the appeal is incompetent because of the reasons that the impugned decree and judgement has attained finality so far as legal representatives of the

deceased Soba Ram and Daya Ram Respondents No. 2 and 3 are concerned; the success of appeal in hand against the impugned judgement and

decree will under all circumstances lead this court to pass a decree and judgement which may be in conflict between the appellants and the legal

representatives of the deceased-respondents, therefore, it would lead to the court passing of decree which will be contradictory to a decree which

had become final with respect to the same subject matter between the appellants and the deceased-respondents and that memorandum of appeal

without impleading legal representatives of deceased-respondents being necessary parties, cannot be said properly constituted and that the cause

of deceased- respondents in the subject matter of reference in question is indivisible. The State of Punjab Vs. Nathu Ram, . Therefore, the appeal

is incompetent and same is dismissed alongwith connected CMPs. However, parties are left to bear their own costs. Record be returned back to

the court below alongwith copy of this order.