

(1963) 12 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 1744 of 1960

Dasondha Singh Teja Singh and Others	APPELLANT
Vs	
Shadi Ram Sardha Ram and Others	RESPONDENT

Date of Decision : 10-12-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4 , Order 22 Rule 9
Limitation Act, 1963 — Article 177, 5

Citation : AIR 1964 P&H 336 : (1964) 66 PLR 782

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : Partap Singh, for the Appellant; Y.P. Gandhi, for the Respondent

Judgement

D.K. Mahajan, J.—This second appeal must be dismissed on the short ground that it has abated. Plaintiff Shadi Ram had filed a suit for possession of land against Tara Singh and others. Plaintiff's suit was decreed by the trial Court against Tara Singh Defendant 1 and Defendants 4 to 10. Dasondha Singh filed an appeal against this decision in the Court of the District Judge. The learned District Judge allowed the appeal of Dasondha Singh in part. Shadi Ram's suit, was decreed, only qua his share of the land and dismissed qua the share of his brother who had not sued and in addition whose suit had already been dismissed Against this decision of the learned District. Judge Dasaundha Singh preferred the present second appeal. Shadi Ram also filed a cross-appeal R.S.A. No. 26 of 1961.

Shadi Ram died on the 15th of December, 1961. In Shadi Ram's cross-appeal, his legal representatives were impleaded within limitation. In the second appeal filed by Dasaundha Singh the application to implead Shadi Rain's legal representatives was made on the 18th December, 1962. This application was not supported by an affidavit. All that was stated in this application was that the Appellant had come to know of the death of Shadi Ram from the letter dated 10th November, 1962 received by his counsel on 12th November, 1902, from the

High Court office. This application was granted by a learned Single Judge of this Court subject to just exceptions. Later on an application was filed for setting aside the abatement under Order 22, Rule 9, Code of Civil Procedure. This application was made on 28th January, 1963, and the sole ground urged in the application was want of knowledge of death.

2. Mr. Partap Singh, learned Counsel for the Appellant, in the circumstances contended that as in the appeal filed by the deceased Shadi Ram his legal representative had been brought on the record and both these appeals have arisen out of the same judgment therefore "he could take the benefit of that impleading so far as his appeal was concerned and his appeal does not abate. This argument is without any force in view of Division Bench decision in Punjab State Vs. Sardar Atma Singh, , wherein a similar argument was repelled. I am bound by this decision and following the same I reject this argument.

3. The second contention raised by the learned Counsel is that his appeal be treated as cross-objections, to Shadi Ram's appeal. This again cannot be done because his appeal in point of time was first and Shadi Ram's appeal was a later appeal. Therefore this argument will be of no consequence.

4. The last contention advanced by the learned Counsel is that his client had no knowledge of the death, of Shadi Ram. In support of this it is pointed out that the land in dispute is situate in Saidpur which is 30 miles from Kaithal and Kaithal is 80 miles from Patiala where the Appellant lives and therefore in the circumstances it must be assumed that the Appellant could have no knowledge of Shadi Ram's death. It is not necessary to go into this matter any further because even if it is assumed that the Appellant had no knowledge of the death he had certainly knowledge of it on the 12th November, 1962, when the High Court letter was received by his counsel. The agent's knowledge is knowledge of the principal.

The period prescribed by the Limitation Act for impleading legal representative of a deceased Respondent is ninety days from the date of the death of the deceased Respondent vide Article 177. Lack of knowledge would merely be a ground to "excuse" delay u/s 5 of the Limitation Act. It will be therefore apparent that on 18th December, 1962, when the application for impleading legal representative was made the period prescribed by Article 177 of the Limitation Act had expired. As a matter of fact one year had elapsed between the death and the application under Order 22, Rule 4. Therefore in the circumstances it was imperative upon the Appellant to prove each day's delay from the date of the knowledge of the death which in this case must be held to be 12th November, 1962. The application under Order 22, Rule 4 of the CPC for impleading other legal representatives was made on 18th December, 1962, long after the period of limitation. No satisfactory explanation of this delay has been given. All that the learned Counsel for the Appellant has been able to contend is that he communicated to the counsel at Patiala who had entrusted the case to him and the counsel at Patiala took time to contact the Appellant and therefore this delay.

This does not comply with the requirement of law for each delay has to be explained.

In this connection reference may be made to the decision in Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., . I am, therefore, fully satisfied that no case has been made out for condoning the delay in impleading the legal representatives of the deceased Shadi Ram u/s 5 of the Limitation Act. That being so this appeal must be dismissed as having abated. There will be no order as to costs.