
(1964) 07 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 7 of 1964

Dina Nath Dhar and Others	Vs	APPELLANT
Pt. Makhan Lal Dhar and Others		RESPONDENT

Date of Decision : 09-07-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, Order 22 Rule 5

Citation : (1964) 07 J&K CK 0001

Hon'ble Judges : J.N. Wazir, C.J

Bench : Single Bench

Advocate : Sunder Lal and D.N. Gado, for the Appellant; J.L. Chaudhary, for the Respondent

Judgement

J.N. Wazir, C.J.—This revision application directed against an order of the District Judge arises out of the following circumstances:

2. Radha Krishen Dhar filed a suit against Dina Nath and Ors. for recovery of Rs. 2400/-on the basis of a promote The Plaintiff s suit was

dismissed. The Plaintiff died and his two sons, Makhan Lal and Vijay Kumar and widow, Smt. Radha Mali filed an appeal before the District

Judge. During the pendency of the appeal an application was made by the Respondents on 22-2-1962 that Prithvi Nath was a necessary party and

may he impleaded as an Appellant in the appeal. This application was resisted by the Appellants on the ground that Prithvi Nath was not a legal

representative of Radha Krishen deceased and it was not necessary to implead him. The parties led evidence on the issue whether or not 1965 J.

A K. D.F./I (1), Prithvi Nath was legal representative of; the de- cases Prithvi Nath himself, appeared on behalf of the Appellants and stated that

he was not a legal representative of Radha Krishen deceased, and that he was

adopted by his grandfather, Bhagwan Das and that he had no interest in the; assets left by Radha Krishen. The learned District Judge came to the conclusion that Prithvi Nath not being legal representative of the deceased, the omission of his name from the Appellants does not affect the appeal. The application made by the Defendant was dismissed and hence this revision.

3. It is argued on behalf of the Defendants Petitioners that the mere fact that Prithvi Nath did not choose to be impleaded as an Appellant in the appeal would not absolve the Appellants from the liability to implead him as legal representative of the deceased; their failure to bring him on the record as legal representative of Radha Krishen is fatal to the appeal. My attention was drawn to Order 22, Rule 5, CPC which reads as under:

Where a question arises as to whether any person is or is not the legal representative of a deceased Plaintiff or a deceased Defendant, such question shall be determined by the Court.

and it was contended that it was the duty of their Court to determine as to whether Prithvi Nath was or was not the legal representative of the deceased Plaintiff and as there was no clear finding arrived at by the learned District Judge on this point, the case ought to be remanded for fresh

enquiry. It is further argued that Prithvi Nath being a son of Radha Krishen was one of the heirs of the deceased and the failure to bring him on

record resulted in the abatement of the appeal. I have perused the order passed by the learned District Judge dismissing the application of the

Defendants for impleading Prithvi Nath as an Appellant in the appeal. After considering the entire evidence the learned District Judge has come to

the conclusion that it was not necessary to include the name of Prithvi Nath as an applicant in view of his statement that he had no interest in the

assets of the deceased and was not his. The learned Counsel for the Appellants has relied upon a ruling of the Allahabad High Court reported as

Sher Pal Singh Vs. Mt. Aijaz Fatima and Others, in which it is laid down:

Where of the heirs of a deceased Plaintiff one is brought on the record within time and the Ors. file an affidavit that they have relinquished their

rights in favour of the heir whose name is on the record, the affidavit cannot be treated as a transfer of rights of the remaining heirs in favour of the

heir on the record and the suit abates as regards the heirs whose names were

not brought upon the record.

It is argued that the mere statement on the part of Prithvi Nath would not affect the legal consequences which flow from not bringing a legal

representative on record in an appeal within time. The ruling relied upon in my opinion does not help the Appellants. The only point for

consideration before their Lordships of the Allahabad High Court was whether heirs could relinquish their rights by affidavit. It was held that they

could not do so and it was necessary to bring them on record. Relinquishment could not be effected by means of an affidavit. The question for

consideration in this revision application is whether a person who does not choose to be impleaded as a legal representative of the deceased, can

be compelled to do so and whether failure to bring his name on record is fatal to the appeal. In my opinion in face of the statement made by a

person that he is not the legal representative of a deceased and does not claim any interest in the property left by the deceased, it is not necessary

to bring him: on record as an Appellant representing the deceased. In this view I am supported by a ruling of the Calcutta High Court Maiyarjan

Bibi and Another Vs. Abdul Shek, in which it has been observed:

Where on the death of the Plaintiff, the Court orders the substitution of two persons as heirs of the deceased but finds subsequently that there are

two other heirs of the deceased and the omission is bona fide, the suit does not abate as a whole but they also can be substituted.

In the present case the Appellants bona fide believed that Prithvi Nath is not the legal representative of the deceased and so omitted to bring his

name on the record as his legal representative. This omission would not affect the appeal. More-over, as pointed out above, Prithvi Nath has

himself stated that he is not the legal representative of the deceased and has no interest in the assets of the deceased. In face of this averment it was

not necessary to implead him as an Appellant, in sup-port of this view reliance may also be placed on Babuie Shanti Devi Vs. Khodai Prasad

Singh and Others, in which it was observed:

On the death of the Plaintiff in a suit to enforce a mortgage his sons were brought on record but not his widow who had herself filed a petition

stating that she was not in possession of the properties of the deceased Plaintiff nor did she desire any interest in the family properties:

Held that the failure to bring widow on record was a mere technical defect.

In Fajar Banoo and Others Vs. Rahim Bux and Others, it has been laid down:

If one or more of the legal representatives are unknown or are unwilling to join in the application a bona fide application by all the representatives

who are willing to join in making the application will be a sufficient compliance with Order 22 Rule 3.

4. As Prithvi Nath was unwilling to be brought on record as the legal representative of the deceased Plaintiff the learned District judge leas rightly

held that it was not necessary to implead him as an Appellant. I do not find any good ground to interfere with this order in revision. This application

is dismissed ""with costs.