

(2011) 04 SHI CK 0398

In the High Court Of Himachal Pradesh

Case No : CMP (M) No. 169 of 2010 and CMP (M) No. 170 of 2010 in Regular
First Appeal No. 169 of 1995

Gulab Dass

APPELLANT

Vs

Kalu Ram and Another

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, Order 22 Rule 9
Land Acquisition Act, 1894 — Section 18, 30
Limitation Act, 1963 — Section 5

Citation : (2011) 04 SHI CK 0398

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—CMP (M) No. 169 of 2010 is an application under Order 22 Rules 3, 9 CPC read with Section 5 of the Limitation Act for condonation of delay, setting aside abatement and bringing on record legal representatives of sole Appellant Gulab Dass died on 17.09.2002. The application has been filed by Anu Lal and Asil Chand. The file of RFA No. 57 of 2000 has also been perused. It has been alleged that Gulab Dass had allegedly executed a Will in favour of Anu Lal and Asil Chand, a submission has been made that Anu Lal and Asil Chand may be brought on record in the present appeal as legal representatives of Gulab Dass after condoning delay and setting aside abatement.

2. It has been stated that there is delay of about 7 years in filing the application. The delay has occurred due to bonafide error and not due to intentional lapse. The applicants were not negligent in any manner. Lapse, if any, on the part of the applicants may be condoned. In RFA No. 57 of 2000, an application under Order 22 Rules 3, 9 for bringing on record legal representatives of Gulab Dass being CMP (M) No. 38 of 2008 was filed along with CMP(M) No. 39 of 2008 for condonation of delay. This Court allowed CMP (M) No. 38 of 2008 and CMP (M) No. 39 of 2008 on 22.04.2008 and legal representatives of Gulab Dass were

brought on record in that appeal. Similarly, for bringing on record legal representatives of Kalu Ram and Shyam Lal CMP(M) Nos. 614 and 615 of 2000 were allowed by this Court on 21.03.2001 in RFA No. 57 of 2001.

3. RFA No. 57 of 2000 on the basis of the compromise was dismissed as not pressed on 25.03.2010. In RFA No. 57 of 2000 award dated 30.09.1999 passed by learned District Judge, Kinnour at Rampur Bushehr in Land Reference No. 14 of 1998/90 u/s 18 of the Land Acquisition Act was assailed. In RFA No. 169 of 1995 the award dated 30.11.1994 u/s 30 of the Land Acquisition Act passed by learned District Judge, Shimla in Land Reference No. 1-S/4 of 1991 has been assailed. This Court vide order dated 04.09.1997 in CMP(M) Nos. 475 and 476 of 1996 condoned the delay in RFA No. 169 of 1995 and brought on record legal representatives of Respondent No. 3.

4. Reply has been filed in CMP (M) No. 169 of 2010. It has been stated that Gulab Dass had died on 17.09.2002 and the appeal has automatically abated. The pendency of the appeal was very much within the knowledge of the applicants including Anu Lal, son of Gulab Dass through whom the present appeal was filed. Respondent No. 2 Kalu Ram had died on 16.03.1999. The legal representatives of Kalu Ram were brought on record in RFA No. 57 of 2000 on 21.03.2001. The application is not maintainable, which is highly belated. The applicants failed to take steps for bringing on record legal representatives of Gulab Dass and Kalu Ram even though in RFA No. 57 of 2000 the legal representatives of Gulab Dass and Kalu Ram were brought on record long time back. The Will in favour of Anu Lal and Asil Chand has been denied for want of knowledge. The prayer has been made for dismissing the application.

5. CMP (M) No. 170 of 2010 has been filed under Order 22 Rules 3,9 CPC read with Section 5 of the Limitation Act for bringing on record legal representatives of Asil Chand died on 15.10.2009 leaving behind legal representatives mentioned in paragraph 4 of the application. The application has been filed by the legal representatives of Asil Chand. They have stated that they had no knowledge of the pendency of RFA No. 169 of 1995 and RFA No. 57 of 2000.

6. No reply has been filed in CMP (M) No. 170 of 2010. Two rejoinders have been filed in CMP (M) No. 169 of 2010 by the applicants and they have reiterated their stand taken in CMP (M) No. 169 of 2010.

7. I have heard the learned Counsel for the parties. In RFA No. 57 of 2000, Gulab Dass was Respondent No. 1. CMP (M) No. 998 of 2007 was filed on 26.06.2007 along with affidavit of Anu Lal in RFA No. 57 of 2000. In that application, it was stated that Gulab Dass had died on 17.09.2002 and prayer was made that factum of death of Gulab Dass may be taken on record, so that Appellants in that appeal may be able to take steps for bringing on record his legal representatives.

8. CMP (M) No. 475 of 1996 in RFA No. 169 of 1995 for bringing on record legal representatives of Shyam Lal was filed on 16.08.1996 along with an affidavit of Anu Lal. In that affidavit Anu Lal has stated that he was General Power of

Attorney of his father Gulab Dass. CMP (M) No. 169 of 2010 is also supported by an affidavit of Anu Lal. It is, thus, clear that Anu Lal was aware of the pendency of RFA No. 169 of 1995. Kalu Ram, Respondent No. 2, had died on 16.03.1999, Gulab Dass had died on 17.09.2002. CMP (M) No. 169 of 2010 for bringing on record legal representatives of Gulab Dass has been filed on 22.02.2010. No application has been filed for bringing on record legal representatives of Kalu Ram.

9. In *Katari Suryanarayana and Others Vs. Koppiseti Subba Rao and Others*, , the Supreme Court has held as follows:

It is not in dispute that the Appellants were neighbours. They were co-sharers. The respective dates of death of the Respondent Nos. 2 and 3, thus, were known to them. It is difficult to conceive that the Petitioners were not in touch with their learned advocates from 1999 to December 2006. If not every week, they are expected to contact their lawyers once in a year. Ignorance of legal consequence without something more would, in our opinion, be not sufficient to condone such a huge delay. Appellants are literates. They have been fighting their cases for a long time. The High Court in its impugned judgment has categorically arrived at a finding that no sufficient cause has been shown for the purpose of condonation of delay in bringing on record the names of the heirs or legal representatives of the deceased Respondent Nos. 2 and 3.

10. The Appellants have not advanced any legally acceptable explanation for not taking steps for bringing on record legal representatives of deceased- Appellant Gulab Dass. The explanation given by the applicants that since findings of learned District Judge dated 30.08.1991 were set aside by this Court, therefore, in RFA No. 169 of 1995 steps could not be taken under bonafide belief that now subject matter will be decided by this Court in RFA No. 57/2000. It has not been made clear in the application on what basis the applicants have gathered this impression.

11. The applicants were represented by the Counsel in RFA No. 57 of 2000. Anu Lal is pursuing RFA No. 169 of 1995. There are no averments in the application that who advised the applicants not to take steps for bringing on record legal representatives of deceased-Appellant Gulab Dass. Anu Lal applicant had filed CMP(M) No. 998 of 2007 on 26.06.2007 in RFA No. 57 of 2000 that the factum of death of Gulab Dass his father may be taken on record, so that Appellants in that appeal could bring legal representatives of Gulab Dass on record. Thus, Anu Lal was very much aware that after the death of a party his legal representatives are required to be brought on record. The applicants have taken false stand in CMP(M) No. 169 of 2010. They were negligent in not bringing on record legal representatives of Gulab Dass within the specified time. In these circumstances, applicants are not entitled to any indulgence of this Court for condonation of delay in filing CMP (M) No. 169 of 2010 on the basis of stand which has been found to be false. No application has been filed in RFA No. 169 of 1995 for bringing on record legal representatives of Kalu Ram.

12. The learned Counsel for the applicants has stated that the Court is bound to adjudicate the dispute and in land acquisition matter the proceedings will not abate on account of death of any party. The proposition propounded by learned Counsel for the applicants is too wide. In a given situation, this may be applicable while answering the reference. The appeal against the award is governed by CPC and the abatement of the appeal is regulated by CPC and Limitation Act. There is no dispute that abatement of appeal is automatic. It is nobody's case that land acquisition appeal is not governed by the CPC and Limitation Act.

13. The CMP (M) No. 170 of 2010 is for bringing on record legal representatives of Asil Chand. CMP (M) No. 170 of 2010 is subject to outcome of CMP (M) No. 169 of 2010. It has already been held that the applicants were negligent in not taking steps for bringing on record legal representatives of Gulab Dass in time. No steps have been taken for bringing on record legal representatives of deceased-Respondent No. 2 Kalu Ram. The applicants have failed to make out a case for condonation of delay, setting aside abatement and bringing on record legal representatives of deceased-Appellant Gulab Dass. In these circumstances, CMP (M) No. 169 of 2010 is liable to be dismissed.

14. In view of above, CMP (M) No. 169 of 2010 is dismissed, so also CMP (M) No. 170 of 2010. The appeal also stands abated.