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**(1998) 01 PAT CK 0053**

**In the Patna High Court**

**Case No : Civil Revision No. 1559 of 1992**

Harinandan Prasad and Another

APPELLANT

Vs

Smt. Basmati Devi

RESPONDENT

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**Date of Decision : 07-01-1998**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 153

**Citation :** (1998) 2 BLJR 1123 : (1998) 1 PLJR 648

**Hon'ble Judges :** B.P. Singh, J; Ashish N. Trivedi, J

**Bench :** Division Bench

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## **Judgement**

1. This Civil Revision petition has been preferred by the defendants-petitioners against the order dated 25.8.1992 passed by the Subordinate Judge III, Muzaffarpur in Title Suit No. 179 of 1991 whereby he rejected the petition filed by the defendants-petitioners to recall the order dated 24.2.1992 passed by his predecessor. The facts to the extent relevant may be briefly noticed.

2. On 9.10.1991 Title Suit No. 179 of 1991 was filed by the plaintiff/opposite party Smt. Basmati Devi against Smt. Kausalya Devi, who was the sole defendant in the suit. On 11.10.1991 the Court admitted the plaint and thereafter issued appropriate directions regarding issuance of notices etc. and also passed an order directing the defendant to maintain status quo. It appears that the sole defendant in the suit namely Kausalya Devi had died earlier on 12.12.1987 and this fact was also known to the plaintiff since in another suit, namely Title Suit No. 191 of 1986, in which the plaintiff was defendant No. 1, legal representative of Kausalya Devi had been substituted after her death on 4.4.1988. Much later on 24.2.1992 an application was filed by the plaintiff/opposite party for bringing on record the petitioners-defendants on the ground that the defendant, Smt. Kausalya Devi was dead. The said application was treated as one under Order VI, Rule 17 of the Code of Civil Procedure. The said application was allowed and accordingly the petitioners-defendants were brought on record as defendants in the suit. It may be noticed that the application under

Order VI, Rule 17 of the CPC was filed on 24.2.1992 and was allowed on the same day.

3. After being impleaded as defendants the petitioners-defendants filed an application on 12.3.1992 for recall of the order dated 24.2.1992 adding them as party defendants in the suit. By the impugned order dated 25.8.1992 the Court below has rejected the said application holding that all matters had been considered by his predecessor while allowing the application.

4. It was sought to be urged before us that no suit can be filed against a dead person and, therefore, the Title Suit purported to have been filed on 9.10.1991 by the plaintiff/opposite party against Smt. Kaushalya Devi, the sole defendant, was in law a nullity, and, therefore, no interim order or any other order, including an order for bringing on record the legal representatives of the deceased defendant could be passed. Counsel submitted that such a suit has been judicially described as a still born suit. Counsel for the plaintiff/opposite party, however, submits that once the legal representatives of the deceased defendant were brought on record, the suit could be treated as a new suit as from the date on which an application was filed for bringing on record the legal representatives of the deceased defendant.

5. The proposition of law as widely stated by Counsel for the petitioners-defendants cannot be accepted. It is no doubt true that the suit was filed against a dead person. It is also true that a decree passed against a dead person is a nullity. However, if after filing of the suit, an application is filed for bringing on record the legal representatives of the deceased defendant, and such legal representatives are actually brought on record, the law is well settled that the suit shall be deemed to be a new suit as from the date on which such application for bringing on record the proposed defendants is filed. It is a mere technicality whether the application should be one for adding party defendants, or for substitution of the legal representatives of the deceased defendant, or an application for amendment of the plaint. Once the defendants are brought on record in place of the deceased defendant, the suit must be considered to be a new suit filed against the aforesaid defendants, and the suit shall be deemed to have commenced on the date on which such an application is made by the plaintiff. We are fortified in our conclusion by a Division Bench judgment of this Court reported in Jagarnath Raut Vs. Commissioners of Buxar Municipality and Others, . The Court held:

It is undoubtedly a correct proposition of law that a suit cannot be instituted even under the present provisions of the CPC against a dead person. But it is a different thing to say that a plaint instituted in such a suit cannot be amended within the period of limitation upon the application of the plaintiff to implead the legal representatives of the deceased defendant as party defendants, provided the suit is not barred by limitation against them on the date of the application.

In our opinion the terms of Section 153 the CPC give sufficient authority to the

Court to allow an amendment of this description. The true legal position is that the Court is treating the amendment petition as if it is a new plaint presented against new parties on the date on which the application for amendment is made. This view is supported by a decision of a Full Bench of the Madras High Court *Adusumilli Gopalakrishnayya and Another Vs. Adivi Lakshmana Rao*, . It appears that in that case an appeal was presented against a person who was dead on the date of presentation of the appeal.

6. The same view was taken by a learned single Judge of this Court in *Bibi Asma Shah Vs. Suresh Prasad and Others*, . Learned Counsel for the petitioners has also brought to our notice a judgment of the Supreme Court which contains observations which support the conclusion reached by us. The aforesaid judgment is reported in *Ram Prasad Dagduram Vs. Vijay Kumar Motilal Mirakhanwala and Others*, .

7. Counsel for the defendants-petitioners sought to urge before us that following the procedure laid down in the judgment of the Supreme Court, the suit must be deemed to be a new suit with effect from the date on which the defendants are added as parties. Counsel for the plaintiff/opposite party submits that the suit shall be deemed to be a new suit as from the date on which an application is made for adding the defendants as parties. In the instant case it is not necessary for us to go into that question, because in this case the application was allowed on the same date on which was filed. The question is therefore purely academic, and we do not propose to go into that question.

8. We must, however, clarify that the defendants who have been added as parties in the suit by the order dated 24.2.1992 are not bound by any earlier order passed in their absence. The suit must be treated as a new suit which may be deemed to have been filed against the defendants on 24.2.1992. If any question of limitation arises, or if any other question arises as to the existence of cause of action, the relevant date to be reckoned shall be 24.2.1992, the date on which the new suit is deemed to have been instituted. Counsel for the petitioners submitted that earlier an interim order was passed on 11.10.1991 directing the defendants to maintain status quo. That order was passed against a dead person and therefore the defendants/petitioners are not bound by any such order. That goes without saying, but if any order is now passed in the suit after hearing the defendants, the same will be binding on the parties. This Civil Revision application is accordingly disposed of.