
(2015) 03 RAJ CK 0062
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9638/2012

Jagraj Ram

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10, Order 22 Rule 22, Order 22 Rule 3, Order 22 Rule 3(2)
Constitution of India, 1950 — Article 227

Citation : (2015) 03 RAJ CK 0062

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Suman Choudhary, for the Appellant; R.K. Singhal, Rakesh Chotia and G.J. Gupta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—This writ petition has been filed by the petitioner aggrieved against the order dated 31.5.2012 (Annex. 11) passed by the Board of Revenue, Rajasthan, Ajmer ("BOR"), whereby the revision petition filed by one Smt. Vidhya Devi has been allowed and the judgment dated 27.3.2006 passed by the Additional Collector, Sriganganagar in appeal filed by the petitioner aggrieved against the order dated 1.1.1999 passed by the Tehsildar (Revenue), Sriganganagar has been set-aside.

2. When the notices of the present writ petition were issued to the respondents, it was reported that respondent No. 3 - petitioner before the BOR - Smt. Vidhya Devi was dead. Whereafter, the present petitioner has filed an application under Order XXII, Rule 4 and 9 CPC for taking the legal representatives of deceased respondent No. 3 on record.

3. In the application, the petitioner has indicated the date of death of Smt. Vidhya Devi as 20.8.2007 and has indicated that Smt. Vidhya Devi is survived by the legal representatives as indicated in para 2 of the application and therefore,

they may be taken on record.

4. When this application after service on the proposed legal representatives came up before this Court, by order dated 10.12.2014, it was observed that the BOR allowed the revision petition filed by Smt. Vidhya Devi on 31.5.2012 though she had died on 20.8.2007 and the revision petition had apparently abated.

5. Time was granted to the proposed legal representatives to file reply to the application, if any and to make submissions on the aspect of proceedings before the BOR having abated. Whereafter, time was granted to learned counsel appearing for the proposed legal representatives on four occasions, however, no response has been filed so far.

6. In view of the fact that no response has been filed to the application filed by the petitioner, there is no dispute on the date of death of respondent No. 3 Smt. Vidhya Devi, which is 20.8.2007.

7. The application filed by the petitioner for bringing on record of the present writ petition the legal representatives of respondent No. 3 is therefore, allowed and the legal representatives as indicated in para 2 of the application are taken on record of the present writ petition.

8. It is submitted by learned counsel for the respondents that as the BOR irrespective of death of the petitioner has decided the matter on merits, the petitioner instead of raising the present objection should contest the matter on merits and this Court under Article 227 of the Constitution of India should not interfere in the order passed by the BOR on account of abatement of the proceedings.

9. Having considered the submissions and the fact that Smt. Vidhya Devi had expired on 20.8.2007 and the revision petition was decided by the BOR on 31.5.2012, without any application made by the legal representatives to be impleaded as parties to the revision petition, it is apparent that the petition before the BOR had abated.

10. Provision of Order XXII, Rule 3(2) CPC provides that where within the time limited by law, no application is made for bringing on record the legal representatives, the proceedings so far as the petitioner is concerned shall abate. The abatement of proceedings are automatic and the same is not dependent on either information to the Court or on account of inaction of the parties.

11. In that view of the matter, on passage of three months from the date of death of Smt. Vidhya Devi, the revision petition filed by her stood abated and the same could not have been decided on merits by the BOR. However, it is apparent that in absence of any information either to the counsel for Smt. Vidhya Devi or to the respondent before the BOR, the revision petition was decided on merits and the same was allowed.

12. This Court has considered circumstances wherein the proceedings are

decided by the appellate court after the death of the appellant despite there being no information from either side of the parties in the case of Raghuvver Singh v. Ridmal Singh and Ors. : S.B. Civil Second Appeal No. 60/2011 decided on 2.4.2014, wherein after considering the judgments of this Court in Nanhe Khan v. Ram Das : 1985 RLR 748 and Udai Ram Vs. Dharam Chand, , the order passed in ignorance of death of the appellant was set-aside and the matter was remanded back to the appellate forum enabling the appellant to take steps to set-aside the abatement, if so advised.

13. As already observed hereinbefore, the abatement under the provisions of Order XXII is automatic and once the matter abates any decree passed subsequent thereto is void and cannot be sustained on account of having been passed after the proceedings had abated.

14. In that view of the matter, there is no substance in the submissions made by learned counsel for the legal representatives of respondent No. 3.

15. In view of the fact that the revision petition filed before the BOR by Smt. Vidhya Devi stood abatement on account of her death during the pendency of the revision, no order could have been passed by the BOR, the writ petition is allowed and the order dated 31.5.2012 (Annex. 11) is set-aside. The matter is remanded back to the BOR, leaving it open for the legal representatives of the deceased Smt. Vidhya Devi to file application under Order XXII, Rule 3 CPC before the BOR and seek setting aside of abatement under Order XXII, Rule 9 CPC, if so advised.

16. The application (IA 1712/2013) filed on behalf of Kesu Ram and Ors. seeking impleadment as party respondents based on transfer made by transferee of Smt. Vidhya Devi, is dismissed as having been rendered infructuous. However, it would be open for the said applicants to approach the BOR under the provisions of Order XXII, Rule 10 CPC, if so advised.

17. Another application (IA 3672/2013) filed by Smt. Manju Devi for impleadment under Order I, Rule 10 CPC, who had approached the BOR during the pendency of the revision petition and her application was rejected. However, she did not challenge the order passed by the BOR and has filed the fresh application before this Court under Order I, Rule 10 CPC. The application filed by Smt. Manju has been rendered infructuous, in view of the petition having been allowed and the matter be remanded back to the BOR.