

(1955) 12 RAJ CK 0009
In the Rajasthan High Court
Case No : First Appeal No. 39 of 1949

Jethmal Singh and Others

APPELLANT

Vs

Ranjeet Singh and Others

RESPONDENT

Date of Decision : 13-12-1955

Acts Referred:

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

Citation : AIR 1957 Raj 171

Hon'ble Judges : K.N. Wanchoo, C.J.; D.S. Dave, J

Bench : Division Bench

Advocate : Haraklal, for the Appellant; Amritraj, for the Respondent

Judgement

Wanchoo, C.J.—This is an application by the respondents of this appeal, and they pray that the appeal has abated as Dheersingh and Mangalsingh appellants died more than a year ago, and their legal representatives have not been brought on the record so far.

2. The application is opposed on behalf of the appellants, and their case is that as the legal representatives of the deceased appellants were brought on the record in the lower Court, to which the suit has been remanded, they should be deemed to be on the record, and there was no necessity of any application in this Court by the appellants for bringing the legal representatives of these two deceased appellants" on the record.

In the alternative, it is prayed that if this Court is of the view that an application should have been made in this Court, the delay that has taken place may be condoned u/s 5 of the Limitation Act, and the persons, who have been already brought on the record by the lower Court, may be brought on the record of the appeal as legal representatives of the deceased appellants.

3. The facts, which are not in dispute, and which have led to this application, are these. The appeal has been pending in this Court since 1949. It came up for hearing in October, 1952. At that time two issues were framed by this Court, and

the record sent down to the trial Court for findings on these issues. It was also ordered that after the findings on these issues were received, the appeal would be fixed for rehearing.

It seems that while the record was in the trial Court, and evidence was being recorded on the two new issues, these two appellants died. Thereupon, the respondents themselves applied to that Court for bringing on record the legal representatives of the deceased appellants, namely Dheersingh and Mangalsingh. This application was within the time allowed by law, and their legal representatives were brought on the record.

4. The respondents, however, contend that as the appeal was pending in this Court, it was the duty of the appellants to bring the legal representatives of the deceased appellants on the record of this Court within the time allowed by law, and as that was not done, the appeal before this Court has abated.

It is urged that the fact that the legal representatives of the two deceased" appellants were brought on the record in the trial Court where the matter was pending on remand is of no assistance to the appellants.

5. The question, therefore, that falls for decision is whether it is essential under the law that an application should be made, in the circumstances of this case, to this Court, and the facts that an application was made in the trial Court which was taking evidence on remand, and the legal representatives were brought on record within time in that Court cannot avail the appellants.

Under Order 22, Rule 3, C. P. C., in case of death of a plaintiff, the Court, on an application made in that behalf, has to bring the legal representatives of the deceased plaintiff on the record. Generally speaking, this is the Court where the suit or appeal is pending. In the present case, however, the position was somewhat peculiar.

Though the appeal was pending in this Court, the record was in the trial Court which was taking evidence on the two issues which had been remand-ed to it for disposal. It was because of that that the respondents themselves made an application to the trial Court for bringing the heirs of the deceased appellants on the record. We are of opinion that there is no prohibition in this rule against applying to the Court where the record may be on account of the peculiar circumstances as were obtaining in this case.

Further, under Order 22, Rule 3, any party can apply for purposes of bringing the legal representatives of a deceased party on the record. In these circumstances, we are of opinion that it was not necessary for the appellants to apply to this Court for bringing the heirs of the two deceased appellants on the record when the respondents had already made an application to the trial Court within time, and the heirs had been brought on the record by that Court.

Reference in this connection may be made to *Salabat Singh v. Ram Kishen*, 7 Oudh Gas 17 (A). In that case also the circumstances were exactly similar. The

appeal was pending in the Judicial Commissioner's Court at Lucknow, but the record had been sent down to the lower Court for recording evidence on an issue which had been remitted. While the proceedings were going on in the lower Court one of the parties died, and the legal representatives were brought on the record by the lower Court.

When the case came to the Judicial Commissioner's Court at Lucknow, it was contended that the word "Court" in Section 365, C. P. C. of the Act of 1877 (which corresponds to Order 22, Rule 3 now) did not include the Court to which the record might have gone on remand. The learned Judges were of the view that the lower Court had jurisdiction to do any act which was necessary to carry out the order of remand, and that the representatives of the deceased appellant were properly brought on the record by that Court.

We are of opinion that this is the right view to take particularly as there is nothing in Order 22, Rule 3 which prohibits such a course, though normally such applications are made to the Court where a suit or appeal is pending.

6. It must therefore be held that the legal representatives of Dheersingh and Mangalsingh appellants have been brought on the record within time. The office will make the necessary corrections. There is no force in this application, and we hold that the appeal has not abated. It will now be fixed for hearing in due course.