
(1957) 11 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 426 of 1957

Jowala Singh Prem Singh and Others	Vs	APPELLANT
Malkan Nasirpur and Others		RESPONDENT

Date of Decision : 25-11-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 11, 115 , 141
Limitation Act, 1908 — Article 176

Citation : AIR 1958 P&H 171

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : I.S. Karwal and Kuldip Singh, for the Appellant; Tirath Singh, for the Respondent

Final Decision : Dismissed

Judgement

Tek Chand, J.—This civil revision presented by the defendants-petitioners arises out of the following facts:

2. The plaintiffs, who are the proprietors in village Nasirpur, instituted a suit on 22-2-1951, for a declaration that the defendants, who are their occupancy tenants, should not be declared owners of the land in view of the provisions of the Pepsu Abolition of Occupancy Tenures and Settlement of Land Disputes Ordinance, 2006 Bk., and for injunction that the plaintiffs should not be prohibited from enjoying their right of easement on the land.

This suit was dismissed by the Subordinate Judge. Sultanpur, on 27-11-1951, on the ground that the civil Courts had no jurisdiction. The plaintiffs then presented an appeal to the District Judge, Kapurthala, who agreed with the findings of the trial Court and dismissed the appeal. a revision petition was then presented to the Pepsu High Court, which on the merger of Pepsu and Punjab was disposed of by this Court on 15-2-1957.

It was held that the civil Courts had Jurisdiction, the revision was accepted and

the case remanded to the trial Court for disposal according to law. Isher Singh, one of the defendants, had died in 1955 but this fact was not brought to the notice of this Court when the revision petition was argued. On remand, it was contended before the trial Court that there had been an abatement of the revision petition, as the limitation had long expired, and the deceased having died almost two years ago.

On the other side, it was argued that there could be no abatement of a revision, as Order 22, Civil Procedure Code, did not apply to revisions and Rule 11 of Order 22 extended its applicability to appeals only. The trial Court followed *Mohd. Saddat Ali Khan v. Administrator, Corporation of City of Lahore* AIR 1949 Lah 186; and *Maniebam v. Ramanathan Chettiar* AIR 1949 Mad 435 upholding the view, that there is no question of abatement in case of a revision.

The trial Court was also of the view that the application for setting aside abatement lies only in the Court in which, the proceedings were pending at the time the abatement took place, and this should have been done in the High Court during the pendency of the revision and not in the trial Court. He has also held that, in fact, there was no question of abatement.

He allowed Amur Singh, son of deceased Ishar Singh, to be added a defendant as representing his deceased father. He then proceeded to frame the issues; and evidence in this case has not been recorded so far. Against the above order, the defendants have submitted this petition of revision.

3. S. Kuldip Singh, the learned counsel for the petitioners, maintains that the provisions of Order 22, Civil Procedure Code, apply to revisions as well as to appeals. He has drawn my attention to *Ajudhia Pershad v. Sham Sunder*. AIR 1947 Lah 13. In that case, Cornelius J., was of the view that the principle of abatement was applicable not only to suits and appeals but also to proceedings in revision.

Din Mohammad J., thought that this question was debatable and he declined to express any opinion, especially as it was not necessary for its disposal. The third Judge, Ram Lall J., agreed with Din Mohammad J. This authority is, therefore, of no assistance to the petitioner. Moreover, in AIR 1949 Lah 186 a view contrary to that upheld by Cornelius J., in *Ajudhia Pershad's* case. AIR 1947 Lah 13 was expressed by the Full Bench.

It was held that Order 22, Rule 3 of the CPC was not applicable to revisions and those provisions could not be read in conjunction with Section 141 Civil Procedure Code, because Section 141 was so drafted as to enable a Court to apply to the procedure in regard to suits to such proceedings as were in *pari materia* with suits, and thus original in character. It was held that a revision was very much unlike a suit.

It was also observed that Article 176, Limitation Act, could not be stretched in order to apply to a revision. Therefore, where death took place of a party

pending the revision petition, and no application was made by the legal representatives of the deceased, to be brought on record, after the expiry of the period of ninety days, the petition for revision could not be dismissed on the ground of abatement. The case law was reviewed and Cornelius J., who was also a member of the Full Bench, agreed with Abdur Rahman, Acting C. J.

4. This question has been examined by different High Courts in India, in *Hafasji Ibrahim Vs. Mangalgirji Mathuragirji*, it was held by Chagla J., that where an applicant to the revisional application to the Collector died during the pendency of the revision, his legal representatives could be brought on record even after one month from the death of the applicant, as the provisions of Order 22, did not apply to revisional proceedings before the Collector.

Neither Article 176 of the Indian Limitation Act applied to parties to the revision nor could the scope of Section 141 Civil Procedure Code, be extended so as to cover the case of revisions. Support for this view is also found in *Husain v. Seth Pearey Lal* AIR 3939 Oudh 277, AIR 1949 Mad 435 and *Babulal and Another Vs. Mannilal*,

5. My attention has also been drawn to an authority of a Single Judge of Madhya Bharat in *Chakrapanj Lalprasad v. Biharilal Mahabir* AIR 1953 Mad 272 who dissented from the view expressed in AIR 1949 Lah 186; and AIR 1949 Mad 435 and held that where any of the parties to a revision dies, the suit abates under Order 22 and step should, therefore, be taken for setting aside the order of abatement under Order 22. Rule 9, Civil Procedure Code.

I do not find myself in agreement with the above view expressed by the learned Judge of Madhya Bharat. Ordinarily the provisions of Order 22, Civil Procedure Code, govern the case of abatement during the pendency of the suit. This principle has been extended expressly by Rule 11 of Order 22 to the case of appeals but there is no mention of its applicability to revisions.

This is a case in which the maxim *inclusio unius est exclusio alterius* should apply, and I think that by restricting the application of the rule of abatement expressly to suits and appeals, the intention of the legislature was to exclude from its purview cases arising from proceedings in revision. Article 176. Limitation Act, which provides a period of limitation for making the legal representatives a party, refers to legal representatives "of a deceased plaintiff or of a deceased appellant."

6. In *Thakur Prasad v. Fakirullah* ILR All 106 their Lordships of the Privy Council, while dealing with Section 647 of the Code of Civil Procedure, 1882, which is analogous to Section 141 of the present Code, observed as under:

"Their Lordships think that the proceedings spoken of in Section 647 include original matters in the nature of suits such as proceedings in Probate, guardianships and so forth and do not include executions."

7. In view of the above observations, I do not think that the provisions of Section

141 of the CPC can be read in cases of abatements under Order 22, so as to extend its scope to revisions.

8. In view of what has been stated above, I am of the considered opinion that the decision of the trial Court was in accordance with law. In the result, this petition is dismissed. There will be no order as to costs.