

(2010) 12 BOM CK 0108
In the Bombay High Court
Case No : First Appeal No. 89 of 2006

Managing Director, Goa Industrial Development Corporation, APPELLANT
EDC Complex, Patta Plaza, Panaji-Goa

Vs

Panta Rama Gaonkar, House No.840, Soliem, Kakoda-Goa RESPONDENT
and Others

Date of Decision : 16-12-2010

Acts Referred:

Citation : (2010) 12 BOM CK 0108

Hon'ble Judges : N. A. Britto, J

Bench : Single Bench

Advocate : P. S. Rao, for the Appellant; J. A. Lobo, Advocate for Respondent Nos.1, 2, 3, 5 and 7(a), for the Respondent

Final Decision : Dismissed

Judgement

N. A. Britto, J.—Heard Shri P. S. Rao, learned Counsel on behalf of the appellant and Shri J. A. Lobo, learned Counsel on behalf of Respondent Nos.1, 2, 3, 5 and 7(a). This appeal was filed against Judgment dated 24-11-2005 of the learned reference Court in Land Acquisition Case No.180 of 1999 by which the compensation payable to the respondents was enhanced to Rs.57/- per sq. meter.

2. Respondent No.6 had expired on 14-6-2007 and his legal representatives were not brought on record. By Order dated 2-12-2010, the appeal against him was declared as abated. Records also show that respondent No.4 had expired prior to 29-9-2006 and no steps were taken to bring on record his legal representatives and the appeal against him also stands abated.

3. At the time of hearing this appeal, Shri P. S. Rao, learned Counsel appearing on behalf of the appellant submitted that an opportunity be given to the appellant to publish a notice to bring on record the unknown legal representatives of respondent No.7. There is no question of giving any further opportunity as the appeal against deceased respondent No.7 has already abated

inasmuch as it has also been held by this Court that substituted service to unknown person is not one according to law and the procedure prescribed by the Code of Civil Procedure.(See Mr. Shrikant Shambu Volvoikar Vs. Mr. Narendra Pandu Chatim, Mrs. Vandana Narendra Chatim, Unknown heirs of late Lourdes Raquel Milagrina Pinto and Mrs. Mira Pinto,).

4. Shri Rao then submits that although respondent No.7 has expired other co-owners represent his estate and his death will not come in the way of hearing and disposing off the appeal on merits. In this context, learned Counsel has placed reliance on Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, . In this case, the Apex Court had noted that Mrs. Nalini Bai who had half share in the property was already on record and in view of that the impleadment of other legal representatives at a subsequent stage could not affect validity of the proceedings. The said observations of the Apex Court are not at all relevant to the case at hand.

5. Next, learned Counsel submits that assuming the decree appealed from is joint and indivisible then the death of one respondent will not be destructive of the appeal and in this context, Shri Rao has placed reliance on the case of S. Amarjit Singh Kalra (dead) by Lrs. and Others and Smt. Ram Piari (dead) by L.Rs. and Others Vs. Smt. Pramod Gupta (dead) by Lrs. and Others, wherein the Apex Court observed that even assuming that the decree appealed against or challenged before the higher forum is joint and several but deals with the rights of more than one recognized in law to belong to each one of them on their own and unrelated to the others, and the proceedings abate in respect of one or more of either of the parties, the courts are not disabled in any manner to proceed with the proceedings so far as the remaining parties and part of the appeal is concerned. As and when it is found necessary to interfere with the judgment and decree challenged before it, the court can always declare the legal position in general and restrict the ultimate relief to be granted by confining it to those before the court only rather than denying the relief to one and all on account of a procedure lapse or action or inaction of one or the other of the parties before it. The only exception to this course of action should be where the relief granted and the decree ultimately passed would become totally unenforceable and mutually self-destructive and unworkable vis-a-vis the other part, which had become final. As far as possible, courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby render the rights themselves otiose, "ubi jus remedium" (where there is a right, there is a remedy), being a basic principle of jurisprudence. It was a case where the appeal was filed by several appellants and during the pendency of the appeal some of the appellants had expired and the Court had ultimately held that when there are separate claims, having no conflicting interest inter se, jointly considered having regard to similarity of claims and a single judgment and decree passed, it would be treated as combination of several decrees and in such a case death of some of the appellants would not result in the abatement of the entire appeal. The Court further held that merely because the Court for its

convenience combined the claims for joint consideration, parties should not be penalized for no fault of theirs.

6. Shri Lobo, learned Counsel on behalf of respondent Nos.1, 2, 3, 5 and 7(a) submits that the other co-owners cannot represent the interest of deceased co-owner and his rights had to be represented individually and that could be done only by bringing on record his legal representatives. Shri Lobo, therefore, submits that the appeal has abated as a whole as the decree was joint and indivisible, and, therefore deserves to be dismissed.

7. The case of Sardar Amarjit Singh Kalra(dead) by L.Rs. and others v. Pramod Gupta(Smt)(dead) by L.Rs. and others(supra) is also of no help to the appellants. The case at hand is covered by the exception recognized therein. As already stated, defendant Nos.4 and 7 have expired and the appeal against them has abated as the appellants have not brought on record their legal representatives, inspite of various opportunities having been given to the appellants. The judgment/decreed dated 24-11-2005 has attained finality as against the said respondent Nos.4 and 7, and if the present appeal ultimately comes to be allowed then there would be two different and conflicting decrees in the field. The judgment/decreed passed by the trial Court is joint and indivisible and has already become final against respondent Nos.4 and 7, and, therefore the appeal as a whole stands abated. In this context, reference could be made to Bakshish Singh (Dead) by Lrs. Vs. Arjan Singh and Others, wherein it was held that when a decree is single and indivisible, there cannot be inconsistent decrees as against the deceased respondents and the contesting surviving respondents. It was a case where two respondent-partners had died pending the second appeal and the Apex Court held that there cannot be any inconsistent decree as against the dead persons and against whom the decree dismissing the suit had become final and other contesting respondents whose rights have to be adjudicated in the second appeal. As already stated, the judgment/decreed passed by the learned trial Court has attained finality against respondent Nos.4 and 7 and if the present appeal ultimately comes to be allowed then there would be two different decrees in the field, and such a situation is against the law, and, therefore the appeal needs to be dismissed as abated, as a whole. Courts do not proceed with the appeal when the success of the appeal may lead to the Courts coming to a decision which will be in conflict with the decision between the appellant and the deceased respondent and which would lead to the Courts passing a decree which would be contradictory to a decree which had become final with respect to the subject matter between the appellant and the deceased respondent. In view of the above, the appeal is dismissed as abated.