

(1983) 07 AHC CK 0002

In the Allahabad High Court

Case No : Civil Revision No. 859 of 1976 and Civil Miscellaneous Application No"s. (Nil) of 1979 and (Nil) of 1981

Narendra Kumar and Others

APPELLANT

Vs

Surendra Kumar Jain and Another

RESPONDENT

Date of Decision : 15-07-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 4, Order 22 Rule 11, Order 22 Rule 3, Order 22 Rule 4, 104
Limitation Act, 1963 — Article 137
Provincial Small Cause Courts Act, 1887 — Section 17, 17(1), 24, 25

Citation : (1983) 07 AHC CK 0002

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : Rajesh Kumar Agarwal, for the Appellant; R.K. Jain, for the Respondent

Judgement

V.K. Mehrotra, J.—These two applications can be disposed of together for they relate to the same controversy. Plaintiff-applicant No. 3(Sri. Parmanand died on May 30, 1979. An application to bring on record his heirs and legal representatives was made on August 11, 1981 on which date notice was directed to issue to the opposite parties. The opposite parties had, in the meanwhile, made an application on September 30, 1981 saying that no application having been made for bringing on record the heirs of deceased Parmanand, the revision should be abated and disposed of with an order to that effect.

2. Sri. R.K. Jain who appears for the opposite parties, has urged that the revision being one u/s 25 of the Provincial Small Cause Courts Act, an application to bring on record the heirs of deceased Parmanand should have been made within 90 days of the death of Parmanand in accordance with the provisions of Order XXII CPC which will apply to the proceedings u/s 25 on account of Section 17 of the Provincial Small Cause Courts Act. It was urged that, inasmuch as, Section 17 made the provisions of CPC applicable to suits before a Court of Small Causes as

well as to "all proceedings arising out of such suits," the reference to the applicability of Rules 3 and 4 of Order XXII CPC to appeals in Rule 11 of that order should be read as including their application to a revision u/s 25 of the Provincial Small Cause Courts Act for there is no provision for an appeal against a decree passed in a suit under that Act. He has also urged that Order 50 CPC expressly excludes some parts of the Schedule from their applicability to proceedings under the Provincial Small Cause Courts Act but it does not exclude Order 22 CPC. This, according to Sri. Jain, was another indication of the fact that reference to an appeal in Rule 11 of Order 22 CPC was to be so read as to include a revision u/s 25 of the Small Cause Courts Act therein.

3. It is difficult to accept the submission of Sri. Jain. The framers of the CPC took care to provide in Section 7 as well as in Order 50, apart from provisions like Rule 4 of Order 20 Code of Civil Procedure, for the applicability or otherwise of the provisions and the rules of the Code to proceedings under the Provincial Small Cause Courts Act. If it was intended to include a revision u/s 25 of the Provincial Small Cause Courts Act within the category of appeals in Rule 11 of Order 22 Code of Civil Procedure, there was no difficulty in mentioning it specifically in that Rule. The argument based upon the phrase "in all proceedings arising out of such suits" in Section 17(1) of the Provincial Small Cause Courts Act ignores the other provisions of that Act. For example, Section 24 of the Provincial Small Cause Courts Act itself contemplates an appeal against an order made by a Court of Small Causes where the order is one specified in Clause(ff) or Clause(h) of Sub-section(1) of Section 104 of the Code of Civil Procedure. It is not necessary to deal with the submission any further.

4. The submission made by Sri. R.K. Agrawal, who has appeared in support of the plea for permission to substitute the legal heirs of late Parmanand, is that on the analogy of the reasoning which commended itself to a Full Bench of this Court in *Chandrdeo Pandey v. Sukhdeo Rai* 1972 AWR 533 the period of limitation for applying for substituting the heirs of the deceased party in a revision u/s 25 of the Provincial Small Cause Courts Act should also be held to be three years under the residuary provision of Article 137 of the Schedule to the Limitation Act, 1963. In that case, the Full Bench, speaking through R.B. Misra, J. ruled that the provisions of Rules 3 and 4 of Order 22 CPC not being applicable to applications in revision u/s 115 CPC there was no question of abatement of the proceedings in the event of the failure to substitute the heirs of a deceased party and further that the period of three years provided for under the residuary Article 137 should be treated to be a reasonable period of time for bringing on record the heirs of the deceased party. Though, the judgment of the Full Bench was rendered in respect of the question of limitation for bringing on record the heirs of the deceased party in a civil revision u/s 115 Code of Civil Procedure, I see on principles, no difference between a case in which the revisional jurisdiction is exercised u/s 25 of the Provincial Small Cause Courts Act and that in which it is invoked u/s 115 Code of Civil Procedure. The basic principle laid down by the Full Bench is that where the provisions of Rules 3 and 4 of Order 22

CPC are not applicable, it is reasonable to hold that substitution may be sought within a period of three years Under Article 137 of the Schedule to Limitation Act, 1963. This principle is a salutary one and there is no reason why it should not be held applicable to proceedings u/s 25 of the Provincial Small Cause Courts Act.

5. The result of the discussion is that the application made on August 11, 1981 cannot be held to be beyond limitation and no question of declaring the revision as having abated for want of substitution of heirs of deceased-applicant No. 3 within a period of 90 days from the date of death arises. The application dated August 11, 1981 deserves to be and is allowed while that dated September 30, 1980 is rejected.