

(2003) 07 MP CK 0043

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 332 of 2000

Nawab Khan (deceased) through L.Rs. Smt. Chhamu Bai and Others APPELLANT

Vs

Gohar Khan (deceased) through L.Rs. Dilavar Khan and Others RESPONDENT

Date of Decision : 18-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 9

Citation : (2003) 4 MPHT 165

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : A.K. Sethi, for the Appellant; S.G. Gokhle, for the Respondent

Judgement

A.M. Sapre, J.—This is an application made by the appellants of S.A. No. 7 of 1995, under Order 22 Rule 9 of CPC seeking to set aside the abatement, which resulted in dismissal of S.A. No. 7 of 1995, on 26-7-2000.

2. This Court by order dated 26-7-2000 dismissed the Second Appeal No. 7 of 1995 as having been abated on the ground that appellants of the second appeal failed to bring the legal representative of respondent No. 1 -Inamulla Khan who died on 25-2-1999, i.e., during pendency of second appeal.

3. It is submitted that the fact of death was brought to the notice of Court as also to the notice of appellant by the Counsel appearing for respondent No. 1 for the first time on 2-5-2000 in terms of Order 22 Rule 10-A ibid. It is submitted that no sooner the factum of death of respondent No. 1 was disclosed that he died on 25-2-1999 as contemplated under the aforementioned rule, the appellants without any loss of time collected the details and within 60 days made an application for bringing the L.R. of the said respondent on record. It is thus, submitted that there is a sufficient cause made out for setting aside of the abatement and also for condonation of delay in filing application for substitution. The reply is that applicant was aware of the death of the respondent and hence,

no ground to condone the delay.

4. Having heard learned Counsel for the parties and having perused record of the case, I am inclined to allow the application, recall the order, dated 26-7-2000, passed in Second Appeal No. 7 of 1995 and set aside the abatement. As a result, the second appeal is restored to its file for hearing on merits.

5. It is a case where sufficient cause is made out. Merely, because the applicant had the knowledge of death of a particular respondent is in itself no ground to hold that he was equally aware of the legal provision to apply for substitution. These applicants who are illiterate rustic villagers are not expected to know the legal requirement of making an application for substitution of legal representatives of a deceased respondent. They came to know when they approached their lawyer. This, in my opinion, is a sufficient cause for setting aside of an abatement.

6. Accordingly, the order, dated 26-7-2000, passed in S.A. No. 7 of 1995 is recalled. The abatement is set aside. The office is to list the Second Appeal No. 7 of 1995 on the board for passing further orders according to law as if it has not abated and is pending for final disposal.

7. This application is thus, allowed.

8. No costs.