

(1978) 03 KL CK 0022

In the High Court Of Kerala

Case No : C.M.P. No. 13223/77 in A.S. No. 22/77

Pallikkandi Rohini

APPELLANT

Vs

Padmini

RESPONDENT

Date of Decision : 28-03-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 22 Rule 1, Order 22 Rule 2, Order 41 Rule 4
Limitation Act, 1963 — Article 120, 20, 5
Succession Act, 1925 — Section 19, 19A, 212, 212(1), 212(2)

Citation : (1978) 03 KL CK 0022

Hon'ble Judges : Khalid, J

Bench : Single Bench

Advocate : T.S. Venkiteswara Iyer, T.P. Kelu Nambiar and C.S. Narayanan, for the Appellant; V.R. Venkitakrishnan, for the Respondent

Judgement

Khalid, J.—Respondents 1 and 3 to 10 in the appeal have filed this application under Order 1 Rule 10 CPC and Section 151 CPC for transposing them as additional Appellants. The facts leading to this application can briefly be stated first. O.S. No. 23 of 1973 on the file of the Court of the Subordinate Judge of Tellicherry was a suit filed by one Thale for a declaration that the gift deed dated 28th October 1971 alleged to have been executed by her in favour of the Defendants is not binding on her; nor on the plaint schedule properties. She also prayed alternatively that the gift deed be set aside on the ground that it was brought about by undue influence at the instance of the husband of the second Defendant.

2. The first Defendant is her daughter and Defendants 2 to 6 are her grand children. She was living with Defendants 1 and 2. The second Defendant's husband Krishnan was also staying with her. He was managing the affairs of the Plaintiff and was in full control and command of the Plaintiff's affairs. On 29th October 1971 when the first Defendant was away, the second Defendant and her husband persuaded the Plaintiff to go to Cannanore and got the gift deed

executed and registered under the pretext that a power of attorney was necessary for prosecuting the rent control petition filed by her in the Munsiff's Court, Cannanore. The Plaintiff is said to be illiterate and physically weak, old and mentally worn. The Plaintiff owned four items of properties, items 1 and 2 exclusively and items 3 and 4 jointly with the second Defendant in equal halves. Items 3 and 4 were very valuable and items 1 and 2 comparatively negligible in value, As per the gift deed, items 1 and 2 were gifted to Defendants 1 and 3, 3 to 6 and the half right in items 3 and 4 to the second Defendant. Subsequently she came to know of the real nature of the document and that she was the victim of a fraud. Consequently she executed a cancellation deed on 1st December 1971 and then filed the present suit.

3. Defendants 1 and 3 to 6, who are the Petitioners in this petition, support the Plaintiff's case. The second Defendant supported the validity of the gift deed and denied the various allegations made against her and her husband. The Plaintiff was examined as P.W. 1 and the first Defendant as P.W. 2.

4. The trial Court dismissed the suit. The Plaintiff thereupon filed this appeal as an indigent person. Her petition for permission to file the appeal as a pauper was allowed by this Court on 14th January 1977 as per order on C.M.P. No. 9088 of 1975. She died on 3rd April 1977. Her legal representatives are Respondents 1 to 6.

5. In the counter-affidavit filed on behalf of the second Defendant it is stated that since the Plaintiff died on 3rd April, 1977 and since no steps were taken to bring the legal representatives on record within the stipulated time, the appeal should have been dismissed as having abated. The petition is prima facie not maintainable in law. The fact that the Petitioners had supported the Plaintiff's case does not enable them to step into the shoes of the dead person. The right of the Plaintiff died with her. In view of the nature and contentions of the suit, no further right inheres in the Petitioners to enable them to prosecute the appeal as additional Appellants. It is further stated that what the Petitioners cannot directly do cannot be permitted to be done indirectly, meaning thereby that Order 1 Rule 10 cannot be invoked where Order XXII Rule 3 applies.

6. The points urged before me in answer to the application for transposition are as follows:

(1) There is no right to sue surviving in the Petitioners.

(2) The legal representatives not having been brought on record, within time, the appeal should be deemed to have abated.

(3) Order 1 Rule 10 cannot be resorted to by the Petitioners since the requirements of that rule are not satisfied in this case.

7. The Petitioners' counsel would contend that since all the legal representatives are already on record, there is no abatement, that a party need not be impleaded twice over, that the right to sue survives and that the proper remedy

in such cases is only to move under Order 1 Rule 10 Code of Civil Procedure

8. I shall consider these questions seriatim with reference to the various authorities brought to my notice.

9. From the materials available in the case, it is evident that the Petitioners are deeply interested in getting the gift deed set aside since they would get substantial interest in items 3 and 4, which are more valuable than the other items. Therefore, their application to prosecute the appeal is intimately connected with their interest in the property. The right to sue in this case is not merely a personal right but a right involving interest in property.

10. Section 306 of the Indian Succession Act, Act 39 of 1925 gives the answer to the question as to what rights survive in favour of the legal representatives. Section 306 reads as follows:

306. Demands and rights of action of or against deceased survive to and against executor or administrator. -- All demands whatsoever and all rights to prosecute or defend any action of special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

It is clear from the above section that all rights to prosecute or defend any action survive except actions for defamation, assault or other personal injuries. The case on hand can never be stated to be an action involving personal injuries.

11. In this context, it will be useful to refer to Section 212 of the Indian Succession Act in passing. u/s 212(1), letters of administration have to be first granted by a court of competent jurisdiction, before the right to property of a person who has died intestate can be established. Section 212 excludes the need for taking letters of administration for certain communities, Hindus being one among them. Therefore, an action for enforcement of right to property can be maintained and in appropriate cases continued by the members of the communities exempted u/s 212(2) without letters of administration. Since in this case the right to sue survives, which right relates to property, the action sought to be continued by persons entitled to property on the death of the testator, is in order.

12. In *Saudagar Singh v. Narayan Singh* AIR 1917 P.C. 196, Their Lordships of the Judicial Committee had to consider the right of the reversionary heirs, on a question of alienation made by a limited owner. Their Lordships observed that:

It appears to Their Lordships to be clear on this section that where any deed is executed, the result of which may be to prejudice the interests of the reversionary heirs, those heirs, though still reversionary and though they may never get any title because events may preclude them from doing so, may have

a declaration as to the effect of the deed.

The above is an extreme case. The principle laid down in the above decision goes to the extent of holding that even persons who are only reversionary heirs and who may not ultimately get any right in the property have a right to get a declaration that the alienation by a limited owner is bad. In this case, the Petitioners will definitely get a right in the property if the gift is set aside.

13. In *Shravan v. Kashiram* AIR 1927 Bombay 384 a young man of weak mind was made to sell by one of his relations a valuable house. Consideration was not actually paid. On his death, separated cousins brought a suit for a declaration that the sale deed executed was without consideration and was null and void and for possession of the lands, which the transferee had taken possession of. A Division Bench of the Bombay High Court was confronted with the question whether the legal representatives had a right to sue. It was strenuously urged in that case that the suit being one to set aside a document on the ground of fraud and undue influence a right to sue does not devolve on his personal representatives as the relief given by Sections 19 and 19A must be confined to the actual party who has been defrauded, or on whom undue influence was exercised. This contention was repelled and it was held that the legal representatives of the deceased were entitled to maintain an action to set aside the sale deed and that the right to sue would survive on the death of the person on whom fraud had been practised. Therefore, the contention that the right to sue does not survive in this case has to fail.

14. It is true that the application was not made in time in this case. Thale died on 3rd April 1977 and the application is seen to have been made only on 16th August, 1977. The question is whether the appeal has, for this reason, abated. The provisions of law relevant for consideration in this case is contained in Order XXII Rules 1, 2 and 3, which reads:

1. No abatement by party's death, if right to sue survives. -- The death of a Plaintiff or Defendant shall not cause the suit to abate if the right to sue survives.
2. Procedure where one of several Plaintiffs or Defendants dies and right to sue survives. -- Where there are more Plaintiffs or Defendants than one, and any of them dies, and where the right to sue survives to the surviving Plaintiff or Plaintiffs alone, or against the surviving Defendant or Defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants.
3. Procedure in case of death of one of several Plaintiffs or of sole Plaintiff. -- (1) Where one of two or more Plaintiffs dies and the right to sue does not survive to the surviving Plaintiff or Plaintiffs alone, or a sole Plaintiff or sole surviving Plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased Plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under Sub-rule (1), the suit shall abate so far as the deceased Plaintiff is concerned, and, on the application of the Defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased Plaintiff.

Under Rule (1) it is specifically stated that the death of a Plaintiff or Defendant shall not cause the suit to abate, if the right to sue survives.

15. The learned Counsel for the Respondent, Shri Venkitakrishnan, laid considerable stress on the fact that in none of the decided cases, in which the above provisions were construed, related to the death of a sole Plaintiff or Defendant. According to him, when a sole Plaintiff died and the legal representatives were not brought on record in time, the appeal automatically abated and the appeal died a natural death and therefore there was nothing to be pursued by transposing a few Respondents as additional Appellants. As already indicated, Order XXII rule I provides that a suit shall not abate on the death of a Plaintiff or Defendant if the right to sue survives. Rule 2 of Order 22 refers to cases where there are more than one Plaintiffs or Defendants. In such cases where the right to sue survives on the death of one of them, all that the Court, need to do is to cause an entry to be made with regard to this and proceed with the suit. Rule 3(1) of Rule 22 provides that where one of two or more Plaintiffs dies and the right to sue does not survive to the surviving Plaintiff or Plaintiffs alone, or a sole Plaintiff or sole surviving Plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representatives of the deceased Plaintiff to be made a party and shall proceed with the suit. If no application is made within the time provided, the suit shall abate in so far as the deceased Plaintiff is concerned. There is similar provision as to abatement as to the death of a Defendant also. The contention of the Respondent's counsel is, that on the death of a sole Plaintiff, or a sole Appellant, and where the right to sue survives, it is imperative that an application be made within time to cause the legal representatives of the deceased Plaintiff or Appellant as parties. Failure to do so would cause the natural death of the suit or the appeal as the case may be.

16. The learned Counsel for the Petitioner however contended that the position of law canvassed above has no application and has to be distinguished in cases where all the legal representatives of the deceased Plaintiffs are on record. In support of this contention he invited my attention to the decision reported in *Musammat Hifsa Khatoon and Others Vs. Mohammad Salimar Rahman and Others*, . In that case, a similar contention raised before a Full Bench of the Patna High Court was repelled with the following observations:

If, on the death of a deceased party, all his heirs and legal representatives are already on the record, though in their individual capacities, there is in my opinion, no necessity for making them parties twice over also as the heirs of the deceased. It will absolutely be meaningless if it is required that persons, already

on the record being the only heirs of the deceased, must again be brought on the record as the heirs of the deceased.

The object of the rule of substitution is that any order or decree that may be passed in the suit must be passed in presence of the heirs of legal representatives of the deceased after hearing them so as to be binding on them. If, therefore, they are already on record, the purpose of the rule is served and there is no further necessity to make any application in that regard.

The word "alone" used in Rule 2 of Order 22 is very significant. It clearly indicates that if the right to sue survives only to the surviving Plaintiff or Plaintiffs or only against the surviving Defendant or Defendants, it is not necessary to make any application for substitution of the surviving Plaintiff or Plaintiffs, of the surviving Defendant or Defendants, as the Court has only to cause an entry to that effect to be made on the record and the suit has to proceed at the instance of the surviving Plaintiff or Plaintiffs or against the surviving Defendant or Defendants. There is nothing in the above rule to require the surviving parties to be on the record in any particular capacity and it is immaterial whether they are on the record in their capacities.

The terms of the rule itself do not justify any distinction to be made on the ground that the heirs already on the record are on the record in their individual capacities and not as the heirs and legal representatives of the deceased....

The Full Bench in paragraph 12 of the same judgment observed that "the object of filing an application to bring the legal representatives on the record is to intimate to the Court the death of a party and to place the legal representatives on record within time and that if such persons are already parties to the case, the mere non-filing of an application ought not to be fatal to the maintainability of the appeal". It was further held that "where all the heirs or legal representatives of the deceased are already on the record in any capacity, it is not necessary to make an application for their substitution in the place of the deceased and such a case is governed by Rule 2 of Section 22 and not Rules 3 and 4 of that Order".

17. The principle enunciated above found acceptance at the hands of the Andhra Pradesh High Court in a decision reported in 1974 AP 185. The relevant observations appear in paragraphs 47 and 48 which is extracted:

47. In AIR 1931 162 (Privy Council) , Shri George Lowndes, J., observed that:

"... the course of adding pro forma Defendants as co-Plaintiffs should always be adopted where it is necessary for a complete adjudication upon the questions involved in the suit and to avoid multiplicity of proceedings...."

In the instant case before me, the first Plaintiff (i.e. the deceased) left two heirs and they are (i) his sister, who is already on record as the second Plaintiff and (ii) his mother who is already on record as Defendant No. 1. In such a case it is in the interest of justice that the Court is required to substitute the legal heirs of

the deceased and by transposing the first Defendant as Plaintiff.

48. A Full Bench of the Patna High Court in *Musammat Hifsa Khatoon and Others Vs. Mohammad Salimar Rahman and Others*, overruling its earlier decision in *Mt. Waleyatunnissa Begum Vs. Mt. Chalakhi and Others*, , held that:

"....Where all the heirs or legal representatives of the deceased are already on the record in any capacity it is not necessary to make an application for their substitution in the place of the deceased and such a case is governed by Rule 2 of Order XXII and not Rules 3 and 4 of that order...."

It is clear from this ruling that when the legal heirs of a deceased are already on record, even an application under Order XXII, Rule 3 CPC is not necessary and the legal heirs could be brought on record by substitution.

The matter is set at rest by the Supreme Court in the decision reported in *Mahabir Prasad Vs. Jage Ram and Others*, . In that case three Plaintiffs commenced an action against two Defendants. The suit was decreed. In execution, the Defendants contended that the decree was inexecutable because of the provisions of the Delhi Land Reforms Act, 1954. This contention was upheld by the Subordinate Judge and the execution application was dismissed. One of the Plaintiffs alone appealed against that order. Other Plaintiffs were impleaded as Respondents. One of the Respondents-Plaintiffs died pending the appeal, and her name was struck off. When the appeal was heard by the High Court, a contention was raised that since the heirs and the legal representatives of deceased Respondent were not brought on record within the period of limitation, the appeal abated in its entirety. The High Court accepted this contention. Against that order an appeal was preferred under special leave granted by the High Court. The Supreme Court considered the provisions of Order XXII Rule 2 and Order 41 Rule 4 and I need extract only the necessary passage occurring in paragraph 6, which alone is useful for the purpose of this case.

6. Even on the alternative ground that Mahabir Prasad being one of the heirs of Saroj Devi there can be no abatement merely because no formal application for showing Mahabir Prasad as an heir and legal representative of Saroj Devi was made. Where in a proceeding a party dies and one of the legal representatives is already on the record in another capacity, it is only necessary that he should be described by an appropriate application made in that behalf that he is also on the record as an heir and legal representative. Even if there are other heirs and legal representatives and no application for impleading them is made within the period of limitation prescribed by the Limitation Act the proceeding will not abate. On that ground also, the order passed by the High Court cannot be sustained.

The case on hand is stronger. Here all the legal representatives are on the record. In such cases, all that is necessary is that the L. Rs. should be described by a proper application made in that behalf that they are also on the record as heirs and legal representatives. The contention that since no application was

made within the period of limitation would result in the abatement of the appeal, has to fail.

18. The ruling reported in *Sitamony v. Swarajan* 1976 KLT 263, was also brought to my notice. In that case, a full Bench of this Court considered the scope of Order XXII Rule 10. There, in execution of a decree, a property was sold and was purchased by a stranger in Court auction. Auction purchaser sought delivery. This was objected to by the vendee of the property from the Defendant in the suit. He made an application to set aside the sale and that application was allowed. Subsequent to the filing of the appeal, the auction purchaser executed a deed in favour of the Respondent purporting to transfer his right in the property. The transferee did not go on record at that time. The Appellant died on 25th August 1972. The legal representatives of the deceased Appellant did not seek to come on record in the appeal and the appeal abated. The transferee filed an application to implead him on the strength of the assignment obtained by him from the auction purchaser. This was objected on the ground that the appeal having abated, there were no proceedings in which the assignee can seek himself to be impleaded. This Court held that since the appeal abated on the death of the Appellant, his legal representatives not having been brought on record in time, the application by the assignee under Order XXII Rule 10 CPC to come on record was not proper. It was held that on the scheme of Order XXII, it is clear that an assignee has to make an application for leave to continue the suit so long as there is a suit, so far as it concerns the assignee, on the file of the Court. In a suit which is not subsisting there is no scope for seeking continuance. Reliance was sought to be placed on this decision by the Respondent's counsel in support of his contention. But the principle laid down in that case has to be distinguished. In the above case there was clearly abatement since the legal representatives were not on the record and therefore the suit abated. But here, the facts are different. The legal representatives were already on the record, though in another capacity and all that was necessary was their substitution as Appellants.

19. Strong reliance was placed by the Respondent's counsel on a Division Bench ruling of the Allahabad High Court reported in *Thakur v. Mst. Maida Kuar* AIR 1954 Allahabad 305. There the suit was for possession. P. and T. were two brothers, who were arrayed as Defendants in the suit. The suit was decreed. T. alone appealed. Subsequently, no application was filed to bring the legal representatives on record within the period of limitation. Later on, an application was made on behalf of P. that his name be struck off as Respondent No. 4 and he be transposed as an Appellant in the place of T. and he be allowed to prosecute the appeal against the Respondents. It was also mentioned that P. was the sole representative of the Appellant T. who had died. The Court held that the sole Appellant being dead, there was no appeal pending in the Appellate Court after the expiry of the period of limitation and hence the appeal abated. There being therefore no pending appeal, no application for transposition will lie. The Court held that the proper remedy in such cases was to apply for substitution within the period of limitation and if the period had expired, to file an application u/s 5

of the Limitation Act. This decision appears to support the Respondent's case.

20. I shall also refer in passing to a decision reported in *Santoolal v. Champalal* AIR 1934 Nagpur 165, where also a question akin to the one before me arose. There, the Appellant died on 19th November 1931, about three months after the appeal was presented. The son of the deceased Appellant was a Plaintiff with him in that suit and an Appellant in the first appeal. He did not join in the second appeal, and hence was made a Respondent on 13th July 1932, that is, 8 months after the death of his father. The son made an application that he should be brought on record as an Appellant and as a legal representative of the deceased father and that the order of abatement of the appeal should be set aside. The additional Judicial Commissioner who disposed of the second appeal held that since the application was not made within time allowed either under Order 22 Rule 4 or under Order 22 Rule 9, the abatement should not be set aside. It was further observed that the fact that the son was already on the record was of no significance.

21. These two decisions were strongly relied upon by counsel for the Respondent in reinforcement of his plea that the provisions of Rules 2, 3 and 4 of Order 22 must operate in this case also and irrespective of the fact that the legal representatives are already on the record, the application should be made within the time allowed by law to avoid abatement and consequent dismissal of the suit or appeal. I do not think it necessary to examine this aspect further in view of the decisions of the Supreme Court referred above, which adopts a different view. The ultimate position therefore is that, since all the legal representatives of deceased Thale, the original Appellant, were on the record, failure on the part of the legal representatives in not having filed a petition in time, cannot be visited with dismissal of the appeal. All that was necessary for them was to move for their substitution in the place of the original Appellant, which they have done by this application.

22. The matter has to be looked at from a different angle. The article of limitation applicable in this case is Article 20. The first column of Article 120 reads:

Under the Code of Civil Procedure, 1908, to have the legal representative of a deceased Plaintiff or Appellant or of a deceased Defendant or Respondent, made a party.

So what this article contemplates is, the presenting of an application within 90 days, to have the legal representatives of the deceased Plaintiff or Appellant to be made a party. When the legal representatives are already on the party array, there is no question of making them parties twice over. Again Order 22 Rule 3(1) winds up with the expression "the Court", on an application made in that behalf, shall cause the legal representative of the deceased Plaintiff to be made a party and shall proceed with the suit". This also postulates that such an application is not necessary when the person to be impleaded is already on the party array.

23. In paragraph 13 of 1959 Patna 254 already referred to, this position is made clear which can be usefully read for a correct appreciation of the law on the point:

On a careful consideration of the Authorities referred to above, my concluded opinion is that where all the heirs or legal representatives of the deceased are already on the record in any capacity, it is not necessary to make an application for their substitution in the place of the deceased and such a case is governed by Rule 2 of Order 22 and not Rules 3 and 4 of that Order.

24. The next submission made by the Respondent's counsel is that the attempt of the Petitioners to get over the hurdle presented by the provisions of Order 22 Rules 1, 2, 3, and 4 by filing an application under Order 1 Rule 10 should not be countenanced. His first submission is that Order 1 Rule 10 is not strictly applicable to this case. Order 1 Rule 10 reads as follows:

Suit in the name of wrong Plaintiff. -- (1) Where a suit has been instituted in the name of the wrong person as Plaintiff or where it is doubtful whether it has been instituted in the name of the right Plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as Plaintiff upon such terms as the Court thinks just. * * *

On the wording of the said rule, it is contended that there is no case, of the suit having been instituted in the name of the wrong person as the Plaintiff or a doubt having arisen about the fact whether the Plaintiff is the proper person who figures as such in the suit. Further there is no case of any bona fide mistake. The present application is deliberately one filed to transpose the Respondents as additional Appellants to get over the legal hurdle in the form of a statutory mandate contained in Order 22 Rules 2 and 3. This contention can be easily met with the plea that if Order 1 Rule 10 does not apply to the case on hand, the inherent jurisdiction of this Court u/s 151 CPC could be exercised in favour of the Petitioners in the interests of justice.

25. In AIR 1931 162 (Privy Council) , the question arose whether the Appellant before the Judicial Committee of the Privy Council was entitled to the full sum of the compensation assessed by the subordinate Judge. Since all those who claimed the compensation amounts did not figure as Plaintiffs, an objection was raised that the entire amount cannot be directed to be paid. But the Judicial Committee answered this question as follows:

It remains only to consider the question of the Appellant's claim to the full sum of the compensation assessed by the Subordinate Judge. The correctness of the amount so assessed has not been disputed before their Lordships, but it is said that, the Appellant not having established that, the zamindari is by custom impartible, he cannot in any event be entitled to recover more than the quarter ascribable to his share in the estate. But their Lordships think that the question of impartibility should not have been gone into in the present proceedings. All

the members of the family were parties to the suit, and were at least jointly entitled to the whole. The pro forma Defendants asked that a decree should be passed in favour of the Appellant. If there was a technical objection to this, the Court clearly had power at any stage of the proceedings to remedy the defect under Order 1 Rule 10, Code of Civil Procedure, by adding the pro forma Defendants as co-Plaintiffs with the Appellant. Such a course should, in their Lordships' opinion always be adopted where it is necessary for a complete adjudication upon the questions involved in the suit and to avoid multiplicity of proceedings.

26. In *Anandan v. Cheria Gopalan and Ors.* ILR 1959 Ker 862 it was held that under Order 1 Rule 10(2) of the Code of Civil Procedure, the Court had very wide powers to allow parties to be added to the array of Plaintiffs or Appellants or to allow parties to be transposed from the array of Defendants to the array of Plaintiffs and that the question whether a transposition should be allowed or not must be decided upon the facts and circumstances of each particular case.

27. The position is now well-settled that in appropriate cases, not only can a Court allow the application for transposition but the Court should in the interests of justice allow persons on the array of the Defendants or Respondents to be transposed as Plaintiffs or Appellants.

28. On a consideration of the various facts and circumstances of the case, I hold that the Petitioners in this C.M.P., who have right and interest in the property in dispute, should be allowed to transpose themselves as additional Appellants.

29. Lastly the Respondent's counsel submitted that there have been serious laches on the part of the Petitioners and therefore in case the application is to be allowed, it should be on terms. I agree that there has been want of diligence on the part of the Petitioners. Under the circumstances of this case, I direct the Petitioners to pay to Sri V.R. Venkitakrishnan, counsel for the Respondent, a sum of Rs. 350 as costs.