
(1980) 07 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Regular First Appeal No. 2 of 1968

Prabhu

APPELLANT

Vs

Narpet and Others

RESPONDENT

Date of Decision : 25-07-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4

Citation : AIR 1980 HP 42 : (1980) ShimLC 364

Hon'ble Judges : V.P. Gupta, J;T.R. Handa, J

Bench : Division Bench

Advocate : Romes Chand, for the Appellant; Inder Singh, A.C. Sud and K.D. Sud, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gupta, J.—This regular first appeal has been filed by Prabhu appellant against the award, dated 5th Oct., 1967 given by the Additional District Judge, Mandi.

2. The brief facts of the case are that land measuring 15-6-0 bighas situate in village Purana Nagar, Tehsil Sundernagar, District Mandi, was acquired in the year 1961, and an amount of Rupees 44,072-14 P. was assessed as its compensation. The Land Acquisition Collector referred the matter for apportionment, u/s 30 of the Land Acquisition Act, to the District Judge, because Prabhu appellant claimed himself to be a tenant-at-will of the land. The claim of Prabhu, who was also a co-owner in the acquired land, with respect to tenancy was denied by the other co-owners. The Additional District Judge, Mandi, who had to decide this reference framed the following issues on 1st August 1964 :

"1. Whether Lagnoo, Narpat & Param Dev & Bholu have also a share in the tenancy rights with Prabhu?

O. P. Lagnoo etc. 2. Relief."

Another issue was also framed on 23rd Nov., 1965 and it is as follows:

"1. To what share in the compensation the parties are entitled? On parties."

3. The Additional District Judge gave a finding that Prabhu has failed to prove that he is a non-occupancy tenant of the acquired land or any portion of the same, and as a result of this finding he apportioned the compensation amongst the various parties in the following manner

"Shri Narpat alias Dattson of Lachhmu Rs. 1548-02 Shri Bholu son of Lachhmu Rs. 1548-02 Shri Lagnu son of Lachhmu Rs. 1548-02 Smt. Mangti d/o Lachhmu Rs. 1548-05 Smt. Chaitri alias Attru d/o Lachhmu Rs. 1548-02 Smt Dodi d/o Lachhmu Rs. 1548-02 Shri Param Dev son of Bhikham Rs. 1548-02 Shri Nandu son of Khaki Rs.10836-20 Shri Chetu son of Jiunu Rs. 1548-10 Shri Phinu son of Jiunu Rs. 1548-10 Smt. Maheshru wd/o Durga Rs. 2167-25 Shri Bali Ram son of Labar Rs. 1083-60 Shri Baram Ram son of Labar Rs. 1083-60 Smt. Hima wd/o Todar Rs. 2167-25 Shri Budhu son of Shankar Rs. 2167-25 Smt. Reshmo wd/o Ramesh & Rs. 2167-25 Rakesh sons, Smt. Gudi daughter of Kundan son of Shanqar in equal shares

TENANCY RIGHTS IN KHATA No. 240/370.

The tenants are entitled to the following amounts.

Shri Udami son of Oma Rs. 181-85 Shri Chand son of Oma Rs. 181-85 Shri Jamana Singh son of Moti Singh Rs. 363-70 _____ Rs. 44072-14"

4. in this appeal Prabhu appellant has assailed the findings of the Additional District Judge and claimed that he was a tenant-at-will of the acquired property and that he was entitled to compensation for the tenancy rights also,

5. One of the persons, who was impleaded as a respondent in this appeal was Nandu son of Khaki, who had been awarded Rs. 10,836-20 as compensation for his share. This Nandu had died and an application for bringing his legal representative on record was filed by Prabhu appellant on 4th Sept., 1968, alleging that Nandu has died and that his legal representative is Smt. Mandiali, his widow. It was further alleged that the appellant came to know about the death of Nandu from the report of the process-server on 22nd August, 1968, and that Nandu had died about a year back, meaning thereby that Nandu had died somewhere in 1967, This fact is admitted that the application under O. 22, read with S. 151, C.P.C. for impleading the legal representative of Nandu is not within time. Shri Ramesh Chand Sood, learned counsel for the appellant has frankly conceded that every day's delay has got to be explained if the proceedings with respect to abatement are sought to be set aside. He also conceded that there is no explanation as to how the delay in filing the application from 22nd August, 1968, i. e., the date of knowledge of death of Nandu, to 4th Sept., 1968, has occurred. No explanation for this delay has been given. The learned counsel conceded that there are no good or sufficient grounds to condone the delay, but, at the same time he contended that the interests of Nandu are quite distinct and

separate and that the appeal can be heard in his absence.

6. Shri K. D. Sood Advocate appearing on behalf of the contesting respondents contended that the award given by the learned Additional District Judge is a joint award which amounts to a joint decree in favour of all the persons and that the interests of Nandu cannot be said to be distinct and separate for the purposes of his appeal and that in case this appeal is heard in the absence of Nandu then there is the possibility of contradictory and inconsistent awards being passed and as such the appeal should be dismissed in toto as having abated.

7. We have considered the contentions of the learned counsel for the parties and have also gone through the records of the case for deciding this short matter of impleading the legal representative of Nandu deceased or for deciding as to whether the appeal shall abate in toto or partially.

8. So far as the question of impleading the legal representatives of Nandu deceased is concerned, the learned counsel for the appellant frankly conceded that the application under O. 22, C.P.C, is not within time and that the act of abatement is automatic and that there are no sufficient or good grounds for setting aside the abatement against Nandu. In view of this matter, the application with respect to the prayer for setting aside the abatement against Nandu has to be disallowed, and it is accordingly held that the appeal has abated against Nandu deceased.

9. The next question which arises for consideration is whether or not the appeal can be heard in the absence of Nandu.

10. It is admitted that Khata No. 240, Khatauni Numbers 368, 369 and 370 of Jamabandi for the year 1958-59, i. e., the whole of the acquired land was jointly owned by Nandu and others and that Prabhu appellant was also one of the co-owners in this acquired land. The notification under S. 4 of the Act was made on 4th Nov., 1961, and Prabhu transferred his ownership rights on "7th April, 1962. If this transfer of ownership by Prabhu is ignored then Prabhu will be treated as a co-owner of the acquired land. Now Prabhu being a co-owner of the land was claiming tenancy rights in the land as against other co-owners and this right of Prabhu was being contested by some of the owners, Lagnu and others also claimed tenancy rights along with Prabhu in the acquired land. Prabhu appellant was claiming tenancy rights against all the co-owners including Nandu. If the right of tenancy of Prabhu in this appeal is accepted to have been established then it will naturally affect the rights of all the co-owners including Nandu because all the landowners (co-owners) jointly constitute one landlord as against a tenant. This will naturally mean that acceptance of the appeal of Prabhu in this Court is likely to vary the award of the lower court with respect to all the co-owners including the rights of Nandu as well (who was also one of the co-owner/landlords in the acquired land). The appeal has abated against Nandu and so the order of the Additional District Judge, dated 5th Oct., 1967 is final so far as Nandu is concerned. Therefore, the possibility of passing inconsistent and

contradictory awards is not excluded in case the appeal is allowed to proceed in the absence of Nandu because so far as the share of Nandu is concerned the same cannot be varied, but so far as the shares of other co-owners are concerned it is likely to be varied and accordingly the share of Nandu has also to be varied. It is now a settled law that the appeal should abate as a whole if there is undesirable possibility of having two inconsistent or contradictory decrees in one and the same proceedings. In the present case the award/decreed is a joint award/decreed in favour of all the co-owners. To get rid of this joint decree it was essential for the appellant to implead all the joint decree-holders and in the absence of any one (i. e. Nandu) the appeal cannot be decided effectively. In *The State of Punjab Vs. Nathu Ram*, the facts were similar as in the case in hand and their Lordships held that the appeal had abated in toto. In *Ramagya Prasad Gupta and Others Vs. Shri Murli Prasad and Others*, was held:

"The Courts will not proceed with an appeal (a) when the success of the appeal may lead to the Court's coming to a decision which be in conflict with the decision between the appellant and the deceased respondent, and, therefore, it would lead to the Court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the Court, and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective, that is to say, it could not be successfully executed. These three tests are not cumulative tests. Even if one of them is satisfied the Court may dismiss the appeal."

11. In view of the above discussion, it cannot be said that the interests of Nandu are distinct and separable and as such if the appeal has abated against Nandu then it has to be held that the same abates in toto.

12. The net result, therefore, is that this appeal is dismissed as having abated in toto.

13. No order as to costs.