

(1995) 11 MP CK 0040

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1772 of 1992

Prasadi Lal

APPELLANT

Vs

Smt. Mathura Bai and Others

RESPONDENT

Date of Decision : 03-11-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 20

Citation : AIR 1996 MP 246 : (1996) 41 MPLJ 71 : (1996) MPLJ 71

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : K.K. Lahoti, for the Appellant; K.N. Gupta, for the Respondent

Judgement

T.S. Doabia, J.

The brief facts for the purposes of this petition are as under :

Narainlal, Babulal, Jagdish Prasad and Radhabai filed a civil suit. This suit was for recovery of a specified amount. The suit was filed against the present petitioner Parsadilal and also against one Budhram. Ultimately, a decree came to be passed against Parsadilal. He preferred an appeal in the appellate Court. It transpired that the present petitioner did not implead Radhabai as a respondent in the appeal. One Budhram co-defendant was also not arrayed as a defendant. In action of non-impleading of Bhudhram, resulted into dismissal of the appeal as not properly filed. It be seen that in para 10 of the grounds of appeal, the petitioner did state that Radhabai died before the decree was passed in her favour.

As Budhram was not arrayed as a respondent, the first appellate Court as noticed above has dismissed the appeal. It js basically against the above order, the present petition has been preferred.

According to the petitioner, as no decree had been passed against Budhram, this Budhram was not arrayed as a party and omission to array Budhram in

the appeal memo would not be fatal to the maintainability of the appeal. In *State Bank of India Vs. Ramkrishna Pandurang Barve and another*, a suit was filed against a firm and its four partners. A decree was passed against the firm and the two partners. The suit was dismissed so far as the remaining two partners were concerned. An appeal was preferred and the two partners against whom no decree was passed, were not arrayed as defendants. This appeal was dismissed on the ground that all the partners of the firm were not arrayed as respondents in the appeal. The Supreme Court was of the view that it was not necessary to implead those persons against whom the decree had been passed. The reasoning given by the Supreme Court of India would be applicable to the facts of this case though in the reverse order. In this view of the matter, non-impleading of a person against whom no decree was passed, would not be fatal to the maintainability of the appeal. As such, the matter is remanded to the appellate Court for fresh decision taking note of the observations made in this order. The question as to whether Radhabai died before passing a decree would be re-examined. In case, Radhabai died before the passing of the decree, the law laid down by a Division Bench of this Court in 1971 J.L.J. 49 would be attracted. It was observed that a decree in favour of a dead person would also be a nullity. The first appellate Court would take notice of the legal position and determine as to whether Radhabai died before the decree was passed and pass such order as may deem appropriate be passed. The matter is remanded to the appellate Court with the aforesaid directions.