

(1965) 11 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 86 of 1961

Puran Singh Basawa Singh and Others

APPELLANT

Vs

Hazara Singh Punjab Singh and Others

RESPONDENT

Date of Decision : 23-11-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3

Citation : AIR 1966 P&H 312

Hon'ble Judges : Jindra Lal, J;A.N. Grover, J

Bench : Division Bench

Advocate : D.S. Nehra and K.S. Nehra, for the Appellant; T.S. Mangat, for the Respondent

Final Decision : Allowed

Judgement

1. One Dalip Singh who owned 25 bighas and 6 biswas pukhta of land in village Mauran died and in the end of August, 1950, mutation No 560 was sanctioned in favour of the present appellants who claimed to be collaterals in the sixth or seventh degree of the deceased In June 1953 Hazara Singh and other respondents, filed the suit out of which this appeal has arisen for possession of the aforesaid area of land on the ground that they were the real heirs and successors of the last owner, namely. Dalip Singh The sole issue which had to be decided was whether the plain tiffs were the reversioners of Dalip Singh in preference to the defendants The trial Judge found that the plaintiffs were lineal descendants of Mehta. who was a third degree collateral of Bija Singh, the lineal ancestor of Dalip Singh whereas the defendants were mere trespassers On these findings the suit was decreed In appeal the learned District Judge reversed the decree of the trial Court on the Finding that the plaintiffs had fail ed to prove their collateral relationship with the deceased He also found that the defendants were unable to show any connection with the deceased, but that they were entitled to retain possession as against the plaintiffs who had failed to establish their right. A regular second appeal was brought to this Court which was decided

by Mehar Singh J. on 28th November. 1960 He disagreed with the learned District Judge and affirmed the view of the trial Court that the plaintiffs had succeeded in establishing their right to succeed to the suit property The decree of the trial Court was, therefore, restored An appeal under Clause 10 of the Letters Patent has been filed by the defendants after obtaining the requisite leave from the learned Single Judge.

2. During the pendency of the appeal a petition was filed under Order 22 Rule 3 read with Section 151, CPC (C. M. 3490 of 1961) in October. 1961, by the appellants. It has been stated therein that Hazara Singh son of Punjab Singh and Bukhtawar Singh son of Attar Singh, respondents in the Letters Patent Appeal, who were appellants in the Regular Second Appeal decided by the teamed Single Judge, had died on 30th August, 1966, and 2nd August, 1959, respectively, while the said appeal was pending in this Court. Hazara Singh left behind a son Gujjar Singh and Bukhtawar Singh left behind two sons Inder and Sarwan Singh and a daughter Smt. Nando. The legal representatives of the two deceased appellants in the regular second appeal had never been brought on the record and therefore, that appeal had abated in toto. A notice was issued on this petition and it has been argued before us at length because the question of abatement has to be decided first before the Letters Patent Appeal can be disposed of.

3. It is not disputed that the aforesaid two persons who were appellants in the regular Second Appeal had died leaving heirs and legal representatives who were not substituted in their place as appellants The only question, therefore, is whether that appeal had abated as a result of their non-impleadment of their legal representatives.

4. The question of abatement is often a difficult one and it is necessary to examine the pronouncements of the Supreme Court before any important decisions of the High Courts are discussed. In *The State of Punjab Vs. Nathu Ram*, . the facts were that certain land belonging to two brothers L and N jointly was acquired. The matter was referred by the State Government to an arbitrator under Rule 10 of the Punjab Land Acquisition (Defence of India) Rules, 1943 as they had refused to accept the compensation offered by the Collector. The arbitrator passed a joint award granting a higher compensation as also certain sum on account of Income Tax. The State Government appealed against the award. During the pendency of the appeal L died and as his legal representatives were not brought on record, the appeal had abated against him. The question was whether the appeal had also abated against N. It has been pointed out that if a decree is joint and indivisible the consensus of opinion is that the appeal against the other respondents also will not be proceeded with and will have to be dismissed as a result of the abatement of the appeal against the deceased respondent. It has then been observed : -

"Different views exist in the case of joint decrees in favour of the respondents whose rights in the subject-matter of the decree are specified. One view is that in such cases, the abatement of the appeal against the deceased respondent will

have the result of making the decree affecting his specific interest to be final and that the decree against the other respondents can be suitably dealt with by the appellate Court. We do not consider this view correct. The specification of shares or of interest of the deceased respondent does not affect the nature of the decree and the capacity of the joint decree-holder to execute the entire decree or to resist the attempt of the other party to interfere with the joint right decree in his favour."

In the case which was being decided it was held that the appeal before the High Court was an appeal against a decree jointly in favour of L and N and the appeal against the latter alone could not be said to be properly constituted when the appeal against L had abated. In order to get rid of the joint decree, it was essential for the Punjab State to implead both the joint decree-holders in the appeal. In the absence of one joint decree-holder, the appeal was not properly framed. As regards the specification of shares of L and N in the revenue records, it was observed that there was no guarantee of the correctness of the entries. Moreover, the claim was joint claim based on the allegation that the land belonged to L and N jointly. The award and the joint decree were made on that basis and the appellate Court could not decide on the basis of separate shares.

5. In *Ram Sarup Vs. Munshi and Others*, . in an appeal from a pre-emption decree preferred by the vendees, the appellants were five in number They fell into two groups constituted respectively by the 1st and 2nd appellants who were brothers and by appellants 3, 1 and 5. While the appeal was pending in the Supreme Court the 1st appellant died. No application was, however, made to bring on record the legal representatives of the deceased 1st appellant. As the sale was not a sale of any separated item of property in favour of the deceased-appellant but of one entire set of properties to be enjoyed by two sets of vendees in equal shares, it was held that the decree was a joint one and as a part of the decree had become final, by reason of abatement, the entire appeal must be held to have abated. In this connection reliance was placed on a decision of their Lordships in C. A. No. 344 of 1956 D/- 10-4-1962 (SC). In that case the facts were that Labhu and Gurdas were the sons of Ramditta. Gurdas was taken in adoption by one Mihan, a paternal uncle of Ramditta. Labhu died possessed of agricultural land leaving behind him his widow, Mst. Radhi, who died in the year 1945. Jiwa and Gurmukh Singh the grandsons of Ramditta's another paternal uncle, Kesar, filed a suit against Gurdas for a declaration that they were in proprietary possession of an half-share in the said land, and in the alternative for possession of the same. They based their title on the allegation that Gurdas, having been adopted to Mihan, ceased to have any interest as the brother of Labhu and, therefore, the plaintiffs along with Gurdas were entitled to succeed to Labhu's estate in equal shares. Gurdas, however, pleaded that he did not lose his right to succeed in the natural family. The said suit had been decreed by the Courts below. On appeal to the High Court the decree was reversed and the suit was dismissed. On a Letters Patent Appeal the decisions of the Courts below were restored declaring that the plaintiffs were entitled to an half-share of the

property left by Labhu. An appeal was then taken to the Supreme Court During the pendency of that appeal respondent Gurumukh Singh died. It is unnecessary to mention the proceedings before their Lordships, as a result of which it was finally held that there had been abatement of the appeal against Gurumukh Singh as his legal representatives had not been brought on the record. The next question was what would be the impact of that abatement on the appeal After referring to *The State of Punjab Vs. Nathu Ram*, , their Lordships observed :

"Here, as in that case, there is a joint decree The suit was for a declaration to the effect that that plaintiff's were in proprietary possession of an half-share in the land described in the schedule to the plaint. The plaintiffs did not claim separate shares in the said property They asserted an undivided half-share in the said property The defendant denied their right to said share The learned Subordinate Judge decreed the plaintiffs' claim to an half-share in the property and that was finally confirmed by the High Court The position, therefore, is that the present appeal is filed by the defendants, legal representatives for the purpose of vacating the joint decree. If the appeal was dismissed against Gurumukh Singh on the ground that it had abated and was allowed against the 1st plaintiff, there would be two inconsistent decrees- there would be a joint decree in favour of Gurumukh Singh for an half-share in the suit property along with the first plaintiff, while the suit of the first plaintiff would be dismissed "

The attempt of counsel to distinguish the decision in *The State of Punjab Vs. Nathu Ram*, did not succeed because in the opinion of their Lordships "if the present joint decree could be split up into a decree for two different shares in the suit land, the decree in that appeal, could also be treated as one for two moieties in the amount decreed. Indeed, this Court definitely held that even specification of sharers does not affect the nature of the decree. "

6. In *Raghunath Keshava Kharkar Vs. Ganesh and Others*, . Shamdass Narayandas and Jaigopal Narayandas had purchased property described as lot No. 8 in the first Schedule to the plaint, there being one sale deed which had been executed in their favour Jaigopal Narayandas died in April. 1960 after ,the decree of the High Court which had been made in March, 1957. Since the applications; which were made to the High Court for substitution of the heirs of Jaigopal Narayandas were dismissed, an application was made to the Supreme Court for substitution of heirs. The contention raised on behalf of the respondents was that as the heirs of Jaigopal Narayandas had not been brought on record, the entire appeal had abated. Their Lordships expressed the view that the interests of the various defendants who were in possession of the properties were independent and therefore the whole of the appeal could not abate because the heirs of certain deceased defendant in possession of one property had not been brought on the record. As regard lot No. 8, however, it was stated that it being a common property of Shamdass Narayandas and Jaigopal Narayandas. which had been acquired by one sale deed the delay could not be condoned with the result that the suit would abate so far as the lot No 8 was concerned.

7. In union of india (UOI) Vs. Sree Ram Bohra and Others, . two persons Bilas Rai Bohra and Shri Ram Bohra had sued the Union of India for the recovery of a certain amount as compensation on account of loss and damages suffered by the plaintiffs owing to the non-delivery of certain bales of cloth which had been consigned from Bombay to the plaintiff. The trial Court decreed the suit. The Union of India appealed to the High Court of Patna and during the pendency of that appeal Bilas Rai Bohra died. The High Court dismissed the application which had been filed by the Union of India for setting aside the abatement against Bohra and for the substitution of his heirs. Ultimately the High Court dismissed the appeal on the ground that it had abated in its entirety. Relying on the decision in The State of Punjab Vs. Nathu Ram, it was held that as the decree had abated against Bilas Rai Bohra the result of such abatement was that the appeal against the other respondents also had become incompetent as both the plaintiffs had a joint decree and there was nothing in the decree to indicate for whose benefit it was passed or in what proportion the two decree-holders were to get the decretal amount.

8. Now the first decision of the Supreme Court mentioned above The State of Punjab Vs. Nathu Ram,) was given in an appeal against a decision of this Court in Mool Chand Vs. The State, . In the judgment of this Court, in which numerous cases decided by the High Courts had been considered. It was observed that one of the principles governing the decision of the cases was that where the interest of the respondents was from the same source or rested on the same basis all of them must remain parties until the end.

9. The learned counsel for the appellants has relied on the rule deducible from the above decisions and in particular on Ram Sarup's case AIR 1968 SC 553, in which one appellant had died and his legal representatives were not brought on the record and it was held that since the decree was joint the entire appeal had abated. It is pointed out that in the present case the right claimed by the plaintiffs was joint and the decree which had been passed by the trial Court was also a joint decree. When the District Judge dismissed the suit, that must be taken to be a decision which negatived their joint right. In the High Court when two of the plaintiffs, who were the appellants, died, the decree of the District Judge became final qua them. If, therefore, the High Court granted a decree to the other plaintiff-appellants, there would be two contradictory decrees with regard to the right which had been jointly claimed by all the plaintiffs. It is submitted, therefore, that this case is almost on all fours with Ram Sarup's case AIR 1963 SC 558.

That decision of their Lordships of the Supreme Court further negatives the contention sought to be raised on behalf of the present respondents that the rule of abatement has been applied to causes only of the respondents when some of them have died and the legal representatives have not been impleaded, and it has not been applied to appellants, particularly when they were plaintiffs in the suit, as to a case where if they had died during the pendency of the suit a decree

could have been granted in favour of the survivors even if the legal representatives of the deceased plaintiffs had not been impleaded.

Mr. T.S. Mangat for the respondents has cited on *Vinod Sagar v. Vishnubhai* AIR 1947 Lah 388, for the view that one of the co-owners can maintain a suit for ejectment of a trespasser without impleading the other co-owners. It is argued that originally it was open to some of the plaintiffs to institute the suit against the defendants, who have been found to be trespassers, without impleading all the heirs of the deceased. If that was possible, an appeal by some of the plaintiffs should not fail as having abated because two of the plaintiffs, who were appellants, had died and their legal representatives had not been impleaded.

In paragraph 25 of Rattigan's Digest of Customary Law (Thirteenth Edition) it is stated that by virtue of the right of representation, whereby descendants in different degrees from a common ancestor succeed to the share which their immediate ancestor, if alive, would succeed to, all collateral heirs succeed together and not to the exclusion of each other, whether they were associated with, or separated from, the deceased. But the right of collaterals to succeed is not a single indivisible right so as to give each collateral a right of action for the whole estate. Each collateral is entitled only to his own share. In the present case, however, the plaintiffs claiming to be the collaterals of the deceased did not sue for their individual shares. They sought a joint decree for possession, and that was perfectly consistent with the earlier statement contained in paragraph 25 that all the collateral heirs succeed together. Once having sought a joint decree, it was no longer open to them to later on contend that they were suing for their individual shares, nor was the suit founded on those allegations or filed in that manner. The shares of the plaintiffs were not even specified or defined in the plaint. There does not appear, therefore, to be any point of distinction between the present case and the cases decided by the Supreme Court.

10. As regards the submission that one co-owner can sue a trespasser without impleading the other co-owners, that again is a position which does not obtain in the present case. As has been repeatedly pointed out, the suit was filed by all the plaintiffs jointly, and once it had proceeded to the stage of a decree, the principles on which the matter of abatement will have to be decided will be those which have been discussed with reference to the law laid down by the Supreme Court.

11. Nor can the respondents avail of the decision in *Wazira v. Mt. Nandan* AIR 1938 Lah 938. in which a body of reversioners had obtained a declaration during a widow's lifetime that certain alienations were not binding on them. After her death some of them brought a suit for possession of their share and the remaining reversioners were made defendants. One of the plaintiffs died and his legal representative was not brought on record in time. It was held that the suit did not abate as a whole as the remaining plaintiffs' shares were ascertainable and also because any of the previous plaintiffs could have brought a suit in respect of his share only. The facts in this case were apparently different and

distinguishable and this decision is hardly apposite, for determining the question which has arisen in the present case.

12. The learned counsel for the appellants says that the decision of the Supreme Court in Civil Appeal No. 344 of 1956 (SC) fully helps him inasmuch as there the plaintiffs were claiming a declaration as to their right jointly and did not claim separate shares in the property. It having been held that the appeal abated as a whole, even though only one of the respondents had died and his legal representatives had not been impleaded, the present appeal would stand concluded by that decision as also the earlier decision in *Ram Sarup Vs. Munshi and Others*, . This contention appears to be correct and must be upheld.

13. For the reasons given above we hold that the regular second appeal (No. 304 (P) of 1954), which had been brought to this Court, had abated and that the order made by the learned Single Judge must be set aside, because he could not have heard the appeal and allowed it after it had abated without the abatement having been set aside in time, which was never sought to be done.

14. In the result the appeal under Clause 10 of the Letters Patent is allowed and the decision of the learned Single Judge is set aside. In the circumstances there will be no order as to costs.