
(1979) 01 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Revision No. 171 of 1972

Ram Charanlal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-01-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, Order 22 Rule 3(1)

Citation : AIR 1980 Raj 96 : (1979) RLW 439

Hon'ble Judges : Dwarka Prasad, J

Bench : Single Bench

Advocate : A.K. Gupta, for the Appellant; Arun Kumar Bhandari and Abhay Kumar Bhandari and S.B. Mathur, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dwarka Prasad, .

1. This revision application has been filed against the order passed by the Additional District Judge, Dholpur, dated Dec. 14, 1971. The facts of the case are briefly stated as under :

2. Shyamlal, decrees-holder filed an execution application in the Court of Civil Judge, Dholpur, which was dismissed as time barred. An Execution First Appeal was filed by Shyamlal in the Court of District Judge, Bharatpur. The District Judge also dismissed the appeal as time barred but a further appeal to this Court was allowed and the first appeal was remanded to the learned District Judge for a decision thereof on merits after condoning the delay in filing the execution application. Before the remanded appeal could be disposed of by the learned District Judge, the appellant Shyamlal expired on May 8, 1966 leaving behind him his widow Smt. Champa Dei, three sons and a widow and sons of predeceased son, Kedar Nath. Shantilal, one of the sons of deceased decree-holder Shyamlal filed an application on 30th July, 1966 for substitution of the above mentioned legal representatives of his deceased father. Smt. Champa Dei,

widow of the deceased also filed another application on Aug. 1, 1966 for (substituting her as the legal representative of the deceased Shyamlal, on the basis of a registered Will, alleged to have been executed by her deceased husband Shyamlal in her favour. The execution case along with these miscellaneous applications was transferred by the learned District Judge, Bharatpur to the learned Additional District Judge, Dholpur for disposal. During the pendency of the proceedings for substitution Stilt. Champa Dei also expired. Learned Additional District Judge held that the application of Shantilal was maintainable for substitution of the legal representatives of the deceased decree-holder Shyamlal but he also held that the registered Will Ex. A-I, produced by Smt. Champa Dei, widow of deceased Shyamlal, was duly proved and as such Shantilal was excluded from inheriting any property of Shyamlal on account of the said Will. Consequently Nathilal and Shree Bhagwan, sons of Shyamlal deceased, were ordered to be substituted as his legal representatives, as their other brother Kedarnath had died during the lifetime of his father, Shyamlal.

3. Learned counsel for the petitioner argued that Smt. Champa Dei, who had submitted an application for substitution has herself died and as such no person could be substituted on the basis of her application and the other applicant, Shantilal was already held by the First Appellate Court to have been excluded from inheritance in respect of the property of the deceased Shyamlal on account of the registered Will executed by Shyamlal deceased. Thus according to the learned counsel, the order for substitution was bad in law and the appeal should have been declared to have abated.

4. It may be observed in this connection that the language of Order 22, Rule 3, C. P. C. is of wide amplitude and even if an application has been made by a person bona fide for taking on record the legal representatives of a deceased plaintiff or appellant, then those other persons, who had a right in law to continue the suit or proceeding filed by the deceased plaintiff or appellant, could be brought on record on the basis of such an application. Order 22, R. 3, C. P. C. does not confine the right of making an application for substitution to the legal representatives of the deceased plaintiff or appellant only. It has been provided in Order 22, Rule 3, C. P. C. that if 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. The words employed in the aforesaid provision, namely "on an application made in that behalf" clearly point out that any person may file such an application. Thus a person who purports to be a legal representative of the deceased plaintiff or appellant may file an application for bringing on record the legal representatives of the deceased plaintiff or appellant, although ultimately it may be found that the person who had submitted the application was not the real legal representative of the deceased plaintiff, and even then the names of the real legal representatives of the deceased plaintiff may be brought on the record if

their names have been brought to the notice of the Court. Therefore, an application made by a person, who is ultimately found not to be a legal representative of the deceased plaintiff or appellant, would constitute sufficient compliance with the requirements of the provisions of Order 22, Rule 3, C. P. C. if such an application is made bona fide and the same shall enure for the benefits of the true legal representatives of the deceased plaintiff or appellant. In *K. N. V. Subhangalu Naidu v. C. R. Balanagamaya Chettiar* AIR 1939 Mad 148, a person applied for substitution claiming himself to be the legal representative of the deceased plaintiff, but after full enquiry he did not turn out to be the true legal representative of the deceased plaintiff. However, it was held in the aforesaid case that such an application will be a good application for the purpose of Order 22, Rule 3, C. P. C. for bringing on record the true legal representatives of the deceased plaintiff, and will prevent the suit from abating as it was made in good faith by a person alleging himself to be interested in the continuance of the suit. A similar view was also expressed in this Court by Bhandari, J., as he then was, in *Abdul Samad and Others Vs. Wasal and Others*, and it was held that an application must be made for bringing on record those persons who had the right in law to continue the suit filed by the deceased plaintiff, and if the names of the true legal representatives are brought to the notice of the Court, then it becomes the duty of the Court to make such legal representatives parties to the suit or proceeding. It was also held in that case that Order 22, Rule 3, C. P. C. is purposely worded in sufficiently wide language and once the Court is made aware, within time, of the persons who are in a position to prosecute the suit, it is for the Court to make them parties to the suit.

5. Applying the aforesaid principles to the facts of the present case, although Shantilal was not ultimately found to be capable of being substituted as a legal representative of the deceased decree-holder Shyamlal, as he was excluded from inheriting the property of his deceased father on account of the registered Will Ex. A-I executed by Shyamlal, yet the application submitted by Shantilal for substitution of the legal representatives, filed within the period of limitation, shall surely enure for the benefit of the true legal representatives, of the deceased Shyamlal and there could be no legal impediment to the substitution of Nathilal and Shree Bhagwan, sons of deceased Shyamlal, as appellants in the case in place of their deceased father, Shyamlal. The provisions of Order 22, Rule 3, C. P. C. were fully complied with in this case as an application for substitution of the legal representatives of the deceased Shyamlal was filed within time, although by a wrong person, but as the names of the real legal representatives of the deceased were also disclosed in that application, there could be no impediment in substituting the true legal representatives of deceased Shyamlal as appellants in the execution appeal.

6. In these circumstances, I do not find any reason to interfere with the order passed by the learned Additional District Judge, Dholpur. The revision application is accordingly dismissed. However, the parties are left to bear their own costs of the proceedings in this Court.