

(2017) 01 RAJ CK 0138
In the Rajasthan High Court
Case No : 2266 of 2015

Ram Kumar & Ors

APPELLANT

Vs

LRs of Hari Ram S/o Shri Narayan Ram & Ors

RESPONDENT

Date of Decision : 30-01-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 22 Rule 3](#), [Order 22 Rule 9](#), [Order 22 Rule 4](#) -
[Evidence Act, 1872](#)

Citation : (2017) 01 RAJ CK 0138

Hon'ble Judges : Arun Bhansali

Bench : SINGLE BENCH

Advocate : S.L. Jain, C.S. Kotwani

Judgement

1. This appeal is directed against the order dated 3.8.2015, passed by the trial court, whereby the application filed by the appellants under Order XXII Rule 3 & 9 CPC has been rejected.
2. A suit for specific performance was filed by Mana Ram, Krishan Lal, Sahi Ram, Hansraj and Chet Ram against Hari Ram and Smt. Shanti Devi in the year 2004.
3. During the pendency of the suit Chet Ram died on 4.10.2011. No steps were taken for bringing on record his legal representatives.
4. Whereafter, the defendant-Hari Ram died in the year 2012 and his legal representatives were brought on record by application dated 3.7.2012.
5. Whereafter, the present application under Order XXII Rule 3 & 9 CPC and Section 5 of the Limitation Act, 1963 was filed by the appellants - the legal representatives of Chet Ram for being impleaded as legal representatives of deceased-Chet Ram - plaintiff, for setting aside abatement and condonation of delay in filing the application. It was averred that they were living separately from the other plaintiffs; they were unaware of the pendency of the suit; when

order dated 4.4.2013 was passed by the trial court, rejecting the application under Section 65 of the Evidence Act and the same was sought to be challenged by the other plaintiffs by filing a writ petition, they wanted Vakalatnama from Chet Ram then they became aware of the pendency of the suit and on meeting the counsel became aware of the requirement to file the application for being impleaded as legal representatives of deceased-Chet Ram and thereafter the application has been filed without any further loss of time. It was prayed that they may be impleaded as legal representatives of deceased- Chet Ram, abatement be set aside and delay in filing the application be condoned.

6. The application was opposed by the defendants. It was submitted that the parties were living at the same place and the plea sought to be raised regarding unawareness about the pendency of the suit is incorrect. Further submissions were made that the plaintiffs themselves filed application for bringing on record the legal representatives of Hari Ram and, therefore, it cannot be said that they were not aware of the requirement to file the application. Allegations were made that the application was deliberately not filed and now to remove the lacuna, the application has been got filed by the legal representatives. It was also submitted that ignorance of law cannot be an excuse for the delay. It was prayed that the application be dismissed.

7. After hearing the parties, the trial court came to the conclusion that from the address indicated by the parties, they were living at the same place and the fact that the applicants were unaware of pendency of the suit cannot be accepted. It was also concluded by the trial court that ignorance cannot be an excuse and, therefore, on account of delay, the application was liable to be dismissed and, consequently, dismissed the applications filed by the appellants.

8. It is submitted by counsel for the appellants that trial court has committed error in coming to the conclusion that the applicants were aware of the pendency of the suit merely based on the address of the parties, inasmuch as, though the address appears to be the same, the same being of agricultural fields / village, there is no denying of the fact that all the plaintiffs were living separately.

9. Further submissions were made that it is only when the order dated 4.4.2013 was required to be challenged that the applicants became aware of pendency of the suit when the other plaintiffs contacted them for their Vakalatnama, which aspect has not been dealt with / disbelieved by the trial court.

10. Further submissions were made that the application filed by the appellants under Section 5 of the Limitation Act has not been dealt with. It was prayed that the applications deserve to be allowed and for the delay, which has happened, the respondents can be compensated by way of costs.

11. Reliance was placed on the judgment of Hon''ble Supreme Court in Banwari Lal (Dead) & Anr. v. Balbir Singh: 2016(1) SCC 607.

12. Learned counsel appearing for the defendants vehemently opposed the

submissions made by learned counsel for the appellants. It was submitted that the appellants failed to make out any case for condonation of delay in filing the application. It was submitted that the plea regarding unawareness of the pendency of the suit is baseless as the parties are from the same family and the co-plaintiffs were well-aware of the requirements to bring on record the legal representatives, inasmuch as, they have brought the legal representatives of deceased - Hari Ram, one of the defendants on record and, therefore, the application has been got filed by the legal representatives to get over the said aspect of the matter and, consequently, the trial court was justified in dismissing the application filed by the appellants.

13. It was submitted that condoning the delay in a case of this nature would cause serious prejudice to the respondents and, therefore, the appeal deserves to be dismissed.

14. Reliance was placed on *Balwant Singh (Dead) v. Jagdish Singh & Ors.*: 2010 (8) SCC 685.

15. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

16. A bare look at the submissions made on behalf of the appellants indicates that admittedly Chet Ram one of the coplaintiffs died on 4.10.2011 and the application for bringing on record the legal representatives, setting aside the abatement and condonation of delay was filed on 22.4.2013. During the said period when one of the defendants-Hari Ram died, application under Order XXII Rule 4 CPC was filed by the surviving plaintiffs for bringing on record his legal representatives, which application was allowed. The applicants, who are legal representatives of Chet Ram claimed that they were unaware of the pending suit and only when the application filed by the plaintiffs under Section 65 of the Evidence Act was dismissed on 4.4.2013 and the same was required to be challenged by way of a writ petition, they were contacted for giving Vakalatnama and only then they became aware of pending suits and requirement to file the application, which application was immediately filed on 22nd April, 2013.

17. The plea taken / explanation given by the appellants, if accepted, would be a reasonable cause for the delay in filing the application. The trial court came to the conclusion, on account of the address given by the parties, that they were living at the same place, however, the fact of rejection of the application under Section 65 of the Evidence Act on 4.4.2013 and other facts alleged in this regard have not been adverted to / held against the appellants. The explanation given by counsel for the appellants regarding the same address based on the fact that the address pertains to a village appears to be justified, inasmuch as, merely because the address is of the same village, it cannot be concluded that the parties were living together. It would be seen that after passing of the order dated 4.4.2013, within a period of three weeks, the applications have been filed and, therefore, it cannot be said that after becoming aware of the pendency of

the suit, the appellants have filed the application with any undue delay.

18. Another aspect of the matter, which requires consideration is that admittedly when on 4.10.2011 Chet Ram had died, even the respondents could have filed application after passage of 90 days to indicate that the suit has abated, however, they also chose not to file such an application for over 1 1/2 year and, therefore, on that count also it cannot be said that there was any mala-fides involved insofar as the applicants are concerned, in filing the application with delay.

19. Hon''ble Supreme Court in case of Banwari Lal (supra) laid down that the rules of procedure under Order XXII CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties and on sufficient cause, delay in bringing the legal representatives of the deceased party on record should be condoned.

20. So far as the judgment in the case of Balwant Singh (supra) is concerned, in the said case it was found as a fact by the Hon''ble Supreme Court that the parties were not bona-fide in filing the application with delay and on the said count the application was rejected.

21. In view of the above state of affairs, it would be in interest of justice that the appellants are taken on record as legal representatives of Chet Ram in the suit, however, for the delay caused in the disposal of the suit on account of filing of the application, its disposal, pendency of the present appeal and the costs incurred by the defendants, it would be required of the appellants to pay a sum of Rs.10,000/- as cost to the defendant Smt. Shanti Devi.

22. In view of above discussion, the appeal filed by the appellants is allowed, on payment of cost of Rs.10,000/- as directed hereinbefore within a period of three weeks, the order dated 3.8.2015 passed by the trial court shall stand set aside & the applications filed by the appellants under Order XXII Rule 3 & 9 CPC and Section 5 of the Limitation Act shall stand allowed. The delay in filing the application would stand condoned, abatement, if any, would stand set side and the appellants would be impleaded as legal representatives of deceased - Chet Ram - plaintiff in the suit.

23. Amended plaint be filed by the plaintiffs within a period of four weeks.