
(1988) 09 GAU CK 0016
In the Gauhati High Court
Case No : Civil Revision No. 14 of 1985

Senjam Damudor Singh

APPELLANT

Vs

United Bank of India

RESPONDENT

Date of Decision : 09-09-1988

Acts Referred:

Civil Procedure Code, 1908 — Order 1 Rule 10

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (1988) 2 GLJ 394 : (1989) 1 GLR 36

Hon'ble Judges : R.K.Manisana Singh, J

Bench : Single Bench

Advocate : Ch.Komal Singh, R.M.Nath, Advocates appearing for Parties

Judgement

1. In this petition, the petitioner has challenged an order given on 7.8.;H5 by the Second SubJudge at Imphal allowing the amendment of the plant in Judl. Misc Case No. 135 of 1984 arising out of O. S. No. 2 of 1983.

2. Facts : The plaintiff instituted the suit against three (3) defendants. In course of the proceeding of the suit the plaintiff came to know that the defendant2 Senjam Leirenjao Singh died before the filing of the suit. The death of the defendant was not known at the time of the filing of the suit. Therefore, the plaintiff filed an application for adding legal heirs or legal representatives of the deceased defendant by way of amendment. The learned Sub Judge allowed the amendment. Hence this petition.

3. Mr. Komol Singh, the learned counsel for the petitioner, has submitted that the suit was a nullity as no suit could be brought against a dead person. To support his contention he has referred me to a decision in Hiralal vs. Kali Nath, AIR 1962 SC 199 In that case the Supreme has held :

?The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seizin of the case because the

subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passes, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it.?

4. In the present case, as already stated, the suit was brought against 3 defendants and one of the defendants, namely Leirenjao Singh, was dead when the suit was filed.

5. In *C. Muttu vs. Bharath Match Works*, AIR 1964 Mysore 293 (D B), the Mysore High Court, after considering decisions of different High Court and the above decision of the Supreme Court, summarised the law as follows :

?A careful review of the decisions of the several High Courts relating to substitution of a defendant in a suit in place of the original defendant makes it clear (1) that no such substitution can be permitted in a case where there was a sole defendant, (2:, where there are more defendants than one and one of them was dead when the suit was filed, the Courts have held that the legal representatives of the deceased defendant can be brought on record subject to any question of limitation that may be raised by the legal representatives of the deceased person who were brought on record as the suit had been validly presented in so far as the living defendants are concerned, a id (3) where an appeal is filed against a person who was dead on the date of the presentation of the memorandum of appeal,

the Courts have held that the appellant can be permitted to bring the legal representatives of the dead person on record.?

6. In *Rangrao vs. Kmshi Nath*, AIR 1947 Nagpur 73, it has been held that, in a suit where there was more than one defendant and one of the defendants was found dead before the institution of the suit, the legal representatives could be brought on record under O. 1 R. 10 (2), CPC. In *M/S Nevandram vs. Devikabai*, AIR 1982 Bombay 589, the Bombay High Court has held that it is settled position that the mere fact that one of the defendants was dead at the time of the institution of the suit does not render the suit a total nullity so that the heirs of the deceased defendant cannot be brought on record at all.

7. With respect, I am in full agreement with the above decisions. Therefore, in a suit where there are more defendants than one and one of them was found dead when the suit was instituted, the death of the defendant would not render the suit a nullity and the legal heirs or legal representatives of the deceased defendant could be brought on record by invoking the jurisdiction of the Court under Order 1 Rule 10, CPC. For these reasons, the learned SubJudge has rightly allowed the amendment. Accordingly, the petition is dismissed. Stay order, if any, stands vacated.

No costs.