
(1925) 02 PAT CK 0005
In the Patna High Court

Sheikh Imdan Ali

APPELLANT

Vs

Nand Kumar Lal, Munsif and Others and Munshi Tilakdhari Lal
and Another

RESPONDENT

Date of Decision : 16-02-1925

Acts Referred:

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

Citation : 88 Ind. Cas. 478

Hon'ble Judges : Das, J;Adami, J

Bench : Division Bench

Judgement

Das, J.—In this case four parsons, with the leave of the Court obtained under Order I, Rule 8, C.P.C. sued on behalf of the proprietary body of the village of Chhara for an injunction for the demolition of a building erected by the defendants on a part of the common land which the plaintiffs alleged had been reserved for the common purposes of the village. One of the plaintiffs, namely Lajje, died while the case was pending in the Trial Court and his legal representatives were not brought on the record. The suit was dismissed as being barred by limitation, the Court finding that the building on the land had been erected 8 or 10 years before. On an appeal being filed by the three surviving plaintiffs and the legal representatives of Lajje the defendants pleaded that the suit had abated as Lajje's representatives had not been brought on the record within the period of limitation. The lower Appellate Court overruled this plea on the ground that the defendants, not having demanded an abatement in the Trial Court, had impliedly allowed the remaining plaintiffs to prosecute the suit, and finding that the structures on the land had been erected only three months before suit, and that the suit was, therefore, within time, it remanded the case for decision on the merits.

2. The defendants have appealed to this Court from the order of remand, and it is again urged on their behalf that the suit had abated. The lower Appellate Court's view on this point is wrong. There is no question of the defendants

demanding or not demanding an abatement, as an abatement takes place ipso facto if an application for impleading the representative of the deceased party is not made within time. So far as Lajje was concerned the suit must be held to have abated under Order XXII, Rule 3 of the C.P.C. which is not rendered inapplicable by the fact that the suit was brought on behalf of the whole proprietary body of the village. This matter is, however, of no practical importance, as the remaining plaintiffs are not debarred from prosecuting the claim for an injunction. The suit has not abated in toto.

3. The only other point urged on behalf of the appellants is that the proprietary body was represented by the four plaintiffs collectively and is not bound by the proceedings taken after the death of one of those plaintiffs without fresh permission having been obtained by the three survivors under Order I, Rule 8, to prosecute the suit on behalf of the whole body of proprietors. This argument is a very technical one, and we think that it has no real force, seeing that the four persons who brought the suit were only self-constituted representatives of the proprietary body and had not been nominated by that body to represent it.

4. We accordingly dismiss the appeal with costs.