

(1980) 07 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No's. 147, 442 and 481 of 1977 and 644 of 1978

State of Himachal Pradesh, etc.

APPELLANT

Vs

Dhuru Ram, etc.

RESPONDENT

Date of Decision : 25-07-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 153

Citation : AIR 1981 HP 34 : (1980) ShimLC 368

Hon'ble Judges : V.P. Gupta, J;T.R. Handa, J

Bench : Division Bench

Advocate : Inder Singh, General, for the Appellant; O.P. Sharma and Kedarishwar, for the Respondent

Judgement

V.P. Gupta, J.—The facts in all these regular first appeals are practically the same. To appreciate the points in controversy, we are giving briefly the facts of R.F.A. No. (544 of 1978 for the purposes of this reference only.

2. On an application of Dhuru Ram respondent, a reference was made u/s 18 of the Land Acquisition Act by the Land Acquisition Officer to the District Judge, Kangra at Dharamsala. This refer-ance was decided by the Additional District Judge, Kangra at Dharamsala, on 25th June, 1977, and the award was announced in favour of Dhuru Ram claimant-respondent.

3. The State of Himachal Fradesh feeling aggrieved from the decision of the Additional District Judge, by which the amount of compensation had been enhanced, fied this appeal, being R. F. A. No. 644 of 1978. when the notice of appeal was sent to the respondent, a report was received to the effect that the respondent shown in the cause title of the appeal had died.

4. Upon receipt of this report, the appellant filed an application under Order 22 Rule 9. read with Order 22, Rule 4 and Section 151 of the Civil P. C. (hereinafter shortly referred to as the Code), and Section 5 of the Indian Limitatjon Act lor allowing the appellant to bring on record the legal representatives of the

deceased respondent. In the said application, the appellant had stated that the death of respondent was not known to the appellant and that the respondent having become an oustee from the Pong Dam, the whereabouts of the respondent could not be ascertained. It was further asserted that the oustees have settled at different places and, therefore, in ignorance of the death of the respondent, the deceased respondent was shown as a party and that the death of the respondent came to the knowledge of the appellant for the first time when a report on the summons was received to the effect that the respondent is dead.

5. From the application, it is apparent that Dhuru Ram had died on 13th July, 1977. The appeal was filed in the High Court on 19th July, 1978, i.e. the appeal against Dhuru Ram was filed when he had already died.

6. In short, the admitted facts are that at the time of announcement of the award, the respondent (Dhuru Ram) was alive, but at the time of the filing of the appeal the said Dhuru Ram was dead and in the appeal the deceased, Dhuru Ram, had been shown as a respondent.

7. The learned Advocate-General has contended that when an appeal is filed against a dead person then such an appeal is not a nullity and that the court has ample powers to allow the appellant to implead the legal representatives of the deceased respondents in the appeal by allowing him to amend the cause title of the appeal and for this proposition of law, he relied on Section 153 of the Code.

8. The learned counsel for the proposed legal representatives, to whom the notice of the application had been issued, contended that the appeal against a dead person is a nullity and that there is no proper appeal before the court in the eye of law, and as such the court has no jurisdiction to allow amendment of the cause title of the appeal and the court as a consequence cannot allow the legal representatives of the deceased to be made parties in the appeal.

9. We have carefully considered the contentions of the learned counsel for both the parties and have gone through the relevant provisions of law for the purposes of deciding this reference. S. 153 of the Code reads as follows:

"153. The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."

It is true that there cannot be a valid appeal against a dead person and when the appeal is filed against a person who is dead, then it can safely be said that the appeal as filed is incompetent or that the appeal has been filed against a wrong person (named as a respondent). In the case of appeals it is the admitted proposition of law, that even after the expiry of the period of limitation the appellant has a right to file the appeal and the court has ample powers u/s 5 of the Limitation Act to condone the delay in the filing of the appeal and to extend the period of limitation for filing the appeal provided there is sufficient cause

shown for condoning the delay or for extension of the period of limitation. There is also no dispute that if an appeal filed against a wrong person or against no person is dismissed as being incompetent then too a fresh appeal can be filed by the appellant against proper persons, i.e. by im-pleading the proper parties even after the expiry of limitation and the appellant is at liberty to seek the condonation of delay or extension of time and if such delay is condoned or limitation extended then the appeal will be treated to be within time and properly constituted. In view of this admitted proposition of law it can safely be said that although the appeal as filed against a dead respondent is incompetent yet the appellant has a right to file a fresh appeal, if the circumstances of the case otherwise permit him to do so. In the light of this legal position it has to be seen as to whether the appeal which is originally incompetent against a dead person can be allowed to be amended by impleading the names of the legal representatives of the deceased respondent or not.

10. We have been referred to the authorities, (Adusumilli) Gopalakrishnayya v. Adivi Lakshmana Rao AIR 1925 Mad 1210 Doddamallappa Channabasappa Kari v. Gangappa Shiddappa Gulganji AIR 1962 Mys 44 Henjangan Kuki v. Taichung Tangkhul AIR 1972 Man 3 and Ramjeewan Vs. Chand Mohammed, . In all these authorities it has been held that u/s 153 of the Code the Court has powers to permit the cause title of the appeal to be amended by allowing the appellant to im-plead the legal representatives of the deceased respondent in place of the deceased respondent and this procedure will save the appellant from paying the court-fees twice over for the same matter. Such a defect or error in the proceedings can be removed by allowing the appellant to amend the cause title of the appeal. We are also of the opinion that the interpretation of Section 153 of the Code and the view taken by the High Courts of Madras, Mysore, Manipur and Rajasthan in the above quoted authorities is correct. It will, however, be treated that the appeal will be deemed to be filed against the legal representatives of the deceased respondent on the day when such amendment application is filed and thereafter it will be for the appellant to show that there was a sufficient cause for condoning delay in filing the appeal and the appellant will be at liberty to bring his case u/s 5 of the Indian Limitation Act.

11. In view of the above discussion, we hold that the appellate court has authority to allow the appellant to implead the legal representatives of the deceased respondent who was dead at the time of filing the appeal by permitting him to amend the appeal. The appeal against the added parties will be deemed to have been filed on the day when such application for seeking permission to amend the cause title of the appeal is filed. It will be for the appellate court to see as to whether the said appeal is to be treated as having been filed within time, and as to whether there is sufficient cause for condoning the delay in filing the appeal. The question referred to us is, therefore, answered accordingly,

12. After having answered the reference, we find that R, F. As. 644 of 1978, 147 and 481 of 1977 are to be disposed of by a single Judge and as such these

appeals be now put up before the learned single Judge for disposal of application filed under Order 22, Rule 9 and Order 22, Rule 4 read with Section 151 of the Code and u/s 5 of the Indian Limitation Act in accordance with law.

13. R.F.A. 442 of 1977 is to be heard and disposed of by a Division Bench and as such the same be listed for disposal of C. M. Ps. 1221 and 1222 of 1978 before the Division Bench in accordance with law.