

**(1986) 03 MP CK 0023**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Civil Case No. 529 of 1981**

State of Madhya Pradesh

APPELLANT

Vs

Smt. Jambai and Others

RESPONDENT

**Date of Decision : 24-03-1986**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3  
Land Acquisition Act, 1894 — Section 18, 26(2), 53, 54

**Citation : AIR 1987 MP 239 : (1986) 31 MPLJ 341**

**Hon'ble Judges : J.S. Verma, Acting C.J.; B.M. Lal, J**

**Bench : Division Bench**

**Advocate : S.L. Saxena, Dy. Advocate General, for the Appellant; P.R. Padhye, for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

J.S. Verma, Ag. C.J.

This is an application for setting aside the abatement of First Appeal No. 24 of 1976 which was dismissed as abated on 30th November, 1981. The order made in that appeal states that the sole respondent in the appeal having died about three years earlier and no steps having been taken by the appellant (State of M.P.) to bring on record the legal representatives of the deceased respondent, the appeal had abated and, therefore, it was dismissed accordingly.

This application has been made u/s 151 of the Civil P.C. for setting aside the abatement of that appeal. Assuming that such an application lies and it was not necessary to file an application for review for obtaining this relief, the only ground on which this application has been made cannot be sustained. The application has been made on the ground that Order 22 of the Civil P.C. did not apply to the first appeal which was an appeal arising out of a reference made u/s 18 of the Land Acquisition Act. In our opinion, there is no merit in this contention;.

Section 26(2) of the Land Acquisition Act lays down that the award made by the Court in a reference u/s 18 of the Act shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2(2) and Section 2(9), respectively, of the Civil P.C. 1908. Section 53 of the Act lays down that the provisions of the CPC shall apply to all proceedings before the Court i under the Act. Section 54 provides for appeals in proceedings before the Court and lays down that an appeal shall lie to the High Court from the award of the Court in a reference u/s 18 of the Act in accordance with the provisions of the Code of Civil Procedure. Admittedly, the above appeal was such an appeal against the award of the Court in a reference made u/s 18 of the Land Acquisition Act treating it as a decree and the provisions of the CPC were applicable for the disposal of that appeal. On the face of it there appears to be no reason why the provisions of Order 22, CPC should not apply to such an appeal particularly when Section 141, CP.C. as amended by the C.P.C.J. (Amendment) Act, 1976, clearly lays down that the procedure provided in this Code in regard to suits shall be followed as far as it can be made applicable in all proceedings in any Court of Civil jurisdiction and the expression "proceedings" has been defined in the explanation thereto as including proceedings under Order 9 but not including any proceedings only under Article 226 of the Constitution.

On behalf of the State, reference was made to the decision of this Court in Abdul Karim and Another Vs. State of Madhya Pradesh, . In our opinion, that decision is of no assistance to support the agrument that Order 22, C.P.C. does not apply to such an appeal. That was a decision relating to proceedings in the Court u/s 18 of the Land Acquisition Act and not to the proceedings in appeal arising out of proceedings u/s 18 of the Land Acquisition Act. It was held therein that to the proceedings in the court in a reference u/s 18 of the Land Acquisition Act, Order 22, C.P.C. did not apply. It is not necessary for us to go into that question in the present case since we are concerned with an appeal against the award of the Court in a reference made u/s 18 of the Land Acquisition Act which amounts to a decree for the purpose of CPC as already indicated and not merely with a reference u/s 18 of the Act. The only ground on which this application has been filed must therefore be rejected.

Consequently, the application is rejected. No costs.