
(1982) 07 DEL CK 0014

In the Delhi High Court

Case No : Regular Second Appeal No. 60 of 1972

Suraj Parkash and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-07-1982

Acts Referred:

Citation : (1982) 3 DRJ 381 : (1982) 2 ILR Delhi 664 : (1982) RLR 692

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : D.N. Nijhawan and S.L. Bhatia, for the Appellant;

Judgement

Sultan Singh, J.

(1) Plot No. 27, Road No. 34 Ward No. 16, Pusa Road, New Delhi was leased by the Delhi Improvement Trust with effect from 1-4-41 for a period of 90 years in terms of the Lease Deed dated 30-1-42 to Rai Sahib Dhanpat Rai. It appears that Dhanpat Rai assigned his rights in the said plot to Ishwar Singh who farther assigned his rights to Mohd. Sultan and Slah Uddin. This happened prior to the partition of India in 1947. On account of disturbance at the time of partition of the country Mohd. Sultan and Uddin migrated to Pakistan and their lease hold rights in the suit plot became evacuee property and vested in the Custodian of evacuee property. The evacuee property u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act 1954 was acquired by the Central Government for rehabilitation of displaced persons. The plot in question Was valued by the authorities under the said Act some times in 1956. It was auctioned for Rs. 1,40,150.00 on 18-9-60. Shri Krishan Kumar respondent No. 3 gave the highest bid and auction sale A was confirmed in his favor. A sale certificate was issued to him on 30-4-62.

(2) The seven plaintiffs on 13-6-63 filed the suit out of which this second appeal has arisen for a declaration that various orders passed by the authorities under the said Act advertising the sale of the said plot and the purchase of the same by

respondent No. 3 we illegal, void, without jurisdiction, arbitrary, capricious, malicious, corrupt; inoperative and not binding upon them. The suit was dismissed by the trial Court on 18-12-68. The first appeal was dismissed on 23-12-71. This second appeal was filed under section 100 of the Code of Civil Procedure. During the pendency of the appeal Hans Raj plaintiff-appellant No. 2 died. 22-4-80 the respondent No. 3 made an application (C.M. 245/80) alleging that the appellants were inducing other persons in various portions of the suit plot by taking huge amount and thereby creating complications. It was prayed that the appellants be restrained from inducing any other person on the suit plot and that the second appeal be disposed of at an early date. On 10-3-80 the appellants resisted the issue of temporary injunction. They also filed application (C.M. 329/80) under order 22 Rule 3 of the CPC and another application (C.M. 330/80) u/s 5 of the Limitation Act for condensation of delay in applying for bringing on record the heirs and legal representatives of the deceased Hans Raj appellant No. 2. The appellants allege that on receipt of a notice by counsel, Suraj Parkash appellant No. 1 went to the house of Hans Raj appellant No. 2 at 33/2 West Patel Nagar, New Delhi and came to know from his wife that the death of Hans Raj had taken place a year back on 4-8-78, that the appellants had no knowledge of the death of Hans Raj prior to the information conveyed to him by his widow on 10-3-80. The application mentions the names of heirs and legal representatives of Hans Raj deceased. The appellants allege that there is sufficient cause for setting aside the abatement and they pray that the heirs and legal representative of the deceased appellants and Raj be brought on record. Similar allegations were made by them in the application under section 5 of the Limitation Act. These applications are resisted. The learned counsel for respondent No. 3, submits that the appeal has stated in entirety that there is no sufficient cause for setting aside the abatement, that the appellants and/or legal representatives of Hans Raj deceased mentioned in the application, took no step to bring on record the names of heirs and legal representative of the deceased within time. It is apparent from record that Hans Raj appellant No. 2 died on 4.9.78 leaving behind his widow, three sons and three daughters but none of them ever took any step to get themselves substituted. The appellants also did not take any step during the period from 4.9.78 to 10.3.80 on the ground that they had no knowledge about the death of Hans Raj prior to 10.3.80. All the appellants - plaintiffs at the time of filing of the suit were residents of the plot in suit. At the time of filing of the present second appeal also the address of the deceased appellant is of the suit plot. "In the application for setting aside abatement for the first time it was disclosed that wife of Hans Raj was residing at 33/2 West Patel Nagar, New Delhi, It does not stand to reason that the heirs of Hans Raj deceased were not aware of the death of Hans Raj. It is also not believable that other appellants were also not aware of his death. No step was taken for a period of more than eighteen months. No Explanation has been given as to why no step was taken either by the heirs of the deceased appellant or the other appellants had no knowledge about the death of Hans Raj is that sufficient to condone the delay or set aside the abatement. I Therefore, do not find any

ground to condone the delay or set aside the abatement of the appeal in so far as the deceased Hans Raj is concerned.

(3) The next question however is whether the appeal stands abated in entirety. The learned counsel for the appellants submits that the right to sue survives to the surviving appellants alone and Therefore, they have a right to continue the appeal. On the other hand the learned counsel .for respondent No. 3 submits that right to sue does not survive to the surviving appellants alone. To decide this question it is not necessary to refer to the nature of the suit. The appellants-plaintiffs in their plaint allege that they and respondent-defendant No. 3 are displaced persons from West Pakistan, that they are in occupation of the suit plot as allottees, that the various plaintiffs allottees are in occupation of various portions of the suit plot marked A, and on the plan annexed with the plaint. They allege that the plot In question is Nazul property belonging to the Government and that it could not have been sold by the authorities under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 for the various reasons detailed in plaint, that the authorities have not followed the various provisions of the Act and Therefore the property in question was not to be auctioned, but it ought" to have been allotted to the various plaintiffs. They also allege that cause of action accrued to them in 1948 when they occupied the suit plot and .thereafter on various dates. All the seven plaintiffs have prayed for a declaration that the auction held on 18-9-60 was null and void. The main relief of all the plaintiffs jointly is that the auction of the plot in question by the authorities under the said Act is null and void. The appeal as already observed stands abated in so far as Hans Raj deceased is concerned .It would Therefore, mean that the auction sale of the plot in question, in so far as it relates to Hans Raj, is valid. In other words it cannot be challenged by his heirs at any time. If the appeal of the surviving appellants is heard and disposed of on merits there is likelihood of a conflicting decree. The subject matter of the suit is one i.e. auction sale of the plot in question. On account of abatement as far as Hans Raj deceased is concerned, the auction sale is valid and it. cannot held to be invalid as far as other plaintiffs-appellants are. concerned. In other words if this appeal is heard there would be conflicting decrees. One of the tests, whether an appeal or suit abates in toto is, whether the success a of the appeal would lead to a decision in conflict with the decision between the deceased appellant and the respondent. As the subject matter of the appeal is one and there is possibility of conflicting decrees if the appeal of the surviving appellants is heard, I am of. the view that the appeal abated in entirety. In The State of Punjab Vs. Nathu Ram, three tests have been laid down. The Courts will not proceed with an appeal (a) when the success of the appeal may lead to the court's coming to a decision which will be in conflict with the decision between the appellant and the deceased respondent and Therefore -which would lead to the court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent; (b) when the appellant could not have brought. the action for the

necessary reliefs against those respondents alone who are still before the court and (c) when the decree against the surviving respondents, if the appeal succeeds, will be ineffective, that is to say, it could not be successfully executed. In *Shri Chand and other v M/s. Jagdish Parshad Kishan Chand and others*, Air 1966 S.G. 1427 it has been observed that the above three tests are not cumulative tests and even if one of them is satisfied the Court may having regard to all the circumstances hold that the appeal has abated in its entirety. The above three principles were also considered in *Rameshwar Prasad and Others Vs. Shyam Beharilal Jagannath and Others*, and it has been observed that the High Court could not have heard the appeal of surviving appellants when the appeal by the deceased appellant had abated as all the appellants had a common right and interest in getting a decree of ejectment against defendant and such decree could have been on a ground common to all of them. In the instant case the subject matter of the appeal is one and the same which is joint and indivisible i.e. declaration of the auction sale held on 18-9-60 as null and void. I am Therefore of the view that the appeal has abated in entirety.

(4) The learned counsel for the appellants has made submission on merits as well but as the appeal has abated it is not necessary to deal with them. I Therefore, hold that the appeal stands abated in its entirety and accordingly the same stands dismissed .There will be no order as to costs.