
Sunaina Devi Vs Anand Kumar Modi

C.M.P. No. 928 Of 2022

Court: Jharkhand High Court

Date of Decision: Jan. 27, 2025

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Prashant Pallav, Vishal Kumar Tiwary, Shresth Gautam, Gaurav Kumar

Final Decision: Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Prasant Pallav, learned counsel for the petitioner, Mr. Vishal Kumar Tiwary, learned counsel for opposite party nos. 5 and 6 and Mr.

Shresth Gautam along with Mr. Gaurav Kumar, learned counsel for opposite party no.8.

2. Office note suggests that notice upon opposite party no.3 has been received by sister-in-law, notice upon opposite party no.4 has been received by

wife, notice upon opposite party no.7 is validly served. Thus, notices upon opposite party nos. 3, 4 and 7 are deemed to be validly served.

3. It has also been pointed out that opposite party nos.1 and 2 have left for their heavenly abode and I.A. No.6477 of 2023 has been filed for

substitution of opposite party no.1 and for deletion of opposite party no.2.

4. Mr. Pallav, learned counsel for the petitioner submits that opposite party no.1, namely, Ashok Kumar Modi and opposite party no.2, namely, Parwati

Devi died 2-3 years back, however, the petitioner was unaware of the death of opposite party nos. 1 and 2. He submits that in this petition, vide order

dated 19.05.2023 notices were issued upon the opposite parties including opposite party nos. 1 and 2, who have left for their heavenly abode. He

submits that it was not in the knowledge of the petitioner that opposite party nos. 1 and 2 have left for their heavenly abode. He submits that in view of

that, substitution petition has been filed for substituting the legal heirs/successors of opposite party no.1, who are sons of Late Ashok Kumar Modi. He

further submits that so far as opposite party no.2 is concerned, her sons are already on record as opposite party nos. 3 and 4. He submits that in view

of that, this I.A. may kindly be allowed.

5. Mr. Tiwary, learned counsel for opposite party nos. 5 and 6 submits that Civil Miscellaneous Case being No.6 of 2018 was filed challenging the

withdrawal of the suit and the learned Court has rejected the same and that is under challenge in this petition. He opposed the petition on the ground

that the order has been passed against the dead persons on 11.11.2022 and in view of that, the said order has become a nullity. To buttress this

argument, he relied upon the judgment passed by the Hon'ble Supreme Court in the case of Kishun @ Ram Kishun (Dead) through LRS v.

Behari (Dead) by LRS, reported in (2005) 6 SCC 300. He refers paragraph 6 of the said judgment, which reads as under:

"6. As rightly pointed out by learned counsel for the appellants and fairly agreed to by learned senior counsel for the respondent, the decree passed by the

High Court in favour of a party who was dead and against a party who was dead, is obviously a nullity. It is conceded that the legal representatives of neither of

the parties were brought on record in the second appeal and the second appeal stood abated. On this short ground this appeal is liable to be allowed and the

decision of the High Court set aside."

Relying on the above judgment, he submits that the said order itself is a nullity.

6. Mr. Gautam, learned counsel for opposite party no.8 adopts the argument of Mr. Tiwary, learned counsel for opposite party nos. 5 and 6.

7. It is an admitted position that the suit was instituted for cancellation of the sale deed and that was withdrawn and, thereafter, the said civil

miscellaneous case was filed by the petitioner on behalf of the original plaintiff no.2 alleging that the compromise is forged one and the same is

obtained by fraud, however, the learned Court has passed the order against the dead persons. If such a situation is there, the Court finds force in the

argument of Mr. Tiwary, learned counsel for opposite party nos. 5 and 6 that the order is passed against the dead persons and that is a nullity.

8. Paragraph 9 of the judgment relied by Mr. Tiwary, learned counsel for opposite party nos. 5 and 6 in the case of Kishun @ Ram Kishun (Dead)

through LRS (supra) reads as under:

"9. In this situation, we think that interests of justice would be sub- served if the orders and decrees passed in the suit, in the appeals and in the second appeal,

are set aside and the suit remanded to the trial court for making a proper enquiry into the question whether there was a compromise of the disputes between

Behari on the one hand and Kishun and Ram Charan on the other and to record a finding thereon in terms of the proviso to Order XXIII Rule 3 of the Code. Now

that the legal representatives are before us, the trial court will direct the formal correction of the cause title in the plaint, giving an opportunity to the

supplemental plaintiff to bring on record other legal representatives of the parties to the suit, if any. The trial court will thereafter proceed to decide the question

of the existence or otherwise of a compromise or an adjustment of the dispute. If it comes to the conclusion that there was a compromise of the dispute, it will

consider whether the compromise is lawful and could be accepted by the court. In case it is found to be lawful, a decree would be passed in terms of the

compromise. But if it is found that no compromise, as asserted has been proved, or an adjustment of the dispute is proved, the trial court will proceed to decide the

suit on merits after giving the parties before it, the necessary opportunity to establish their respective cases. If sought for by the parties, the trial court will permit

the parties to amend their respective pleadings. Considering that the suit is by now a vintage one, the trial court will expedite the fresh trial and disposal of the

suit.

9. In view of the above, if the order is a nullity and the suit was alleged to be withdrawn by maneuvering the facts, as alleged by the petitioner and in

light of paragraph 9 of the said judgment, this matter can be remanded back to the learned Court to allow all the parties to adduce the evidence and for

deciding the petition. Further, the said civil miscellaneous case has been decided against the dead persons. Thus, the said order is a nullity.

10. If a legal representative adopts that alternative or course of action, it cannot possibly be said that his option to be governed by the decree is against

the law or any concept of public policy or purpose, or the public morality. It is thus a matter entirely at the discretion of the legal representative of a

deceased respondent against whom a decree has been passed after his death to decide whether he will raise the question that the decree has become

a nullity, at the appropriate time, namely, during the course of the hearing of any appeal that may be filed by the other party, or to abandon that obvious

technical objection and fight the appeal on the merits. A reference may be made to the judgment passed in the case of Kavarampeta Venkataiah

and others v. Gayatri Educational Society and others, reported in (2023) 12 SCC 555, wherein, paragraph 6 of the judgment passed in the case

of N. Jayaram Reddy v. LAO, reported in (1979) 3 SCC 578 was considered, by the Hon'ble Supreme Court.

Paragraph 8 of the judgment passed in the case of Kavarampeta Venkataiah and others (supra) reads as under:

"8. Reliance was placed on the decision of this Court in N. Jayaram Reddy v. LAO, to submit that if an order was passed against a dead person, the

representatives of such deceased person could either treat the order or decree to be a nullity or choose to challenge the order on merits. The relevant

observations of this Court in said decision were:-

"6. The basic fact remains that a decree against a dead person is treated as a nullity because it cannot be allowed to operate against his legal representative

when he was never brought on the record to defend the case. Any other view would not be possible or permissible for it would fasten on him a liability for which

he did not have any hearing. So while the law treats such a decree as a nullity qua the legal representative of the deceased defendant or respondent, there is

nothing to prevent him from deciding that he will not treat the decree as a nullity, but will abide by it as it stands, or as it may be mollified thereafter on appeal. If

a legal representative adopts that alternative or course of action, it cannot possibly be said that his option to be governed by the decree is against the law or any

concept of public policy or purpose, or the public morality. It is thus a matter entirely at the discretion of the legal representative of a deceased respondent

against whom a decree has been passed after his death to decide whether he will raise the question that the decree has become a nullity, at the appropriate time,

namely, during the course of the hearing of any appeal that may be filed by the other party, or to abandon that obvious technical objection and fight the appeal

on the merits. He may do so either because of his faith in the strength of his case on the merits, or because of incorrect legal advice, or for the reason that he may

not like to rely on a mere technical plea, or because in the case of cross-appeals, he may have the impression that bringing the legal representative of the

deceased respondent on record in an appeal by a co-appellant will enure for the benefit of or be sufficient for purposes of the cross- appeal. An abandonment of a

technical plea of abatement and the consequential dismissal of the appeal, is therefore a matter at the discretion of the legal representative of the deceased

respondent and there is no justification for the argument to the contrary. It is equally futile to argue that an appellate court is denuded of its jurisdiction to hear

an appeal in which one of the respondents has died and the right to sue does not survive against the surviving defendant or defendants alone merely because no

application has been made to bring his legal representative on the record when no objection to that effect is raised by anyone.~&~&

11. In view of the above, legal heirs/successors cannot be allowed to be remediless and the said order is a nullity as the same has been passed against

the dead persons, who are opposite party nos. 1 and 2.

12. In view of the above proposition of law, the prayer made in the I.A. is allowed.

13. Accordingly, I.A. No.6477 of 2023 is disposed of.

14. Learned counsel for the petitioner will substitute the names of legal heirs/successors of deceased opposite party no.1 as disclosed in the said I.A.,

in course of the day. It has been pointed out that the legal heirs/successors of opposite party no.2 are already on the record as opposite party nos. 3

and 4. Learned counsel for the petitioner will delete the name of opposite party no.2 from the array of the opposite parties, in course of the day.

15. In view of the above judgment relied by Mr. Tiwary, learned counsel for opposite party nos. 5 and 6 in the case of Kishun @ Ram Kishun (Dead)

through LRS (supra), the said order passed by the learned Court against the dead persons in the said civil miscellaneous case is a nullity and in view of

that, the order dated 11.11.2022 passed by the learned Civil Judge (Sr. Division)-I, Koderma in Civil Miscellaneous Case No.6 of 2018 arising out of

Title Suit No.8 of 2010 is, hereby, set aside. The Civil Miscellaneous Case No.6 of 2018 is restored to the file of the learned Court of Civil Judge (Sr.

Division)-I, Koderma, who will decide the same after providing opportunity of hearing to all the sides and substitute the name of opposite party no.1,

namely, Late Ashok Kumar Modi.

16. Accordingly, this petition is allowed in above terms and disposed of.

17. Pending I.A., if any, is disposed of.