
(2014) 06 SHI CK 0127

High Court of Himachal Pradesh

Case No: RSA No. 250 of 2014 and CMP(M) No. 749 of 2014

Kaushalya

APPELLANT

Vs

Swaran Singh

RESPONDENT

Date of Decision: June 24, 2014

Hon'ble Judges: Dharam Chand Chaudhary, J

Bench: Single Bench

Advocate: Dheeraj Vashista, Advocate for the Appellant; Ajay Sharma, Advocate for the Respondent

Final Decision: Allowed

Judgement

Dharam Chand Chaudhary, J.

Challenge herein is to the judgment and decree dated 11.11.2013 passed by learned Additional District Judge, Una, Camp at Amb, in Civil Appeal No. 31-XIII/12, whereby the judgment and decree passed by learned Civil Judge (Junior Division), Court No. II, Amb, in Civil Suit No. 105/05, has been affirmed and the appeal dismissed.

2. Appellant Mela Ram has passed away on 7.8.2013 and his son Rajinder Singh on 30.10.2013, i.e., during the pendency of the appeal in the lower appellate Court. The appeal, however, has been dismissed by learned lower appellate Court without taking note of their death vide judgment and decree impugned before this Court in the present appeal. The impugned judgment, therefore, admittedly is against dead persons, i.e., appellant-plaintiff Mela Ram and his son Rajinder Singh. There is no quarrel so as to they died well before hearing arguments in the appeal by the lower appellate Court.

3. Whether the appeal on their death stands abated for want of consequential steps by the surviving appellant(s) or their legal representatives or not, is a question to be gone into and determined by learned lower appellate Court. No doubt, an application supported by the affidavit of appellant-plaintiff Kaushalya Devi has been filed along with this appeal. In support thereof, copies of the death certificates of

deceased plaintiff Mela Ram and his son Rajinder Singh have also been annexed to the application. However, such material placed on record cannot be looked into by this Court and appellants should bring the same on the record of lower appellate Court to seek substitution of legal representatives of deceased appellant Mela Ram and his son Rajinder Singh.

4. A co-ordinate Bench of this Court in [Jagan Nath and Others Vs. Smt. Ishwari Devi,](#) has held that the question of substitution of legal representatives of a deceased party and the abatement of the suit/appeal for want of consequential steps has to be decided by that very Court where at the time of death of such party the lis was pending. Consequently, the judgment under challenge was set aside and the case was remanded to the lower appellate Court for deciding the questions of substitution of legal representatives of the deceased party and abatement of the appeal, if any.

5. A co-ordinate Bench of this Court, in [Karam Chand and Others Vs. Bakshi Ram and Others,](#) has again held as under:

4. In the given circumstances of the case, one or the questions which arises for determination is as to the effect of death of Pohlo Ram and not bring on record his legal representatives in the appeal before the lower appellate Court or in other words, the questions now involved in the matter are as follows:

(i) Whether the appeal before the lower appellate Court had abated, if so the effect and extent of the abatement;

(ii) Whether the abatement should be set aside or not; and

(iii) Whether the legal representatives of the deceased may be allowed to be brought on record or not?

5. It is well settled that as and when the questions, as aforesaid, arise in relation to a suit or appeal, at the first instance, these are to be decided by the Court in which the suit or appeal was pending at the time of the death of the party and abatement, if any, took place.

6. In view of the legal as well as factual position discussed hereinabove, this Court is not left with any other and further option except to allow this appeal and set aside the impugned judgment and decree and remand the case to the lower appellate Court for deciding the question of substitution of legal representatives of deceased appellant Mela Ram and his son Rajinder Singh and that on their death the appeal stands abated or not and thereafter to dispose of the appeal afresh on merits.

7. For all the reasons hereinabove, the impugned judgment and decree is set aside and the case is remanded to the lower appellate Court with a direction to allow the appellant-plaintiff therein to take consequential steps as they deem appropriate and decide the question of substitution of legal representatives of the deceased

appellant Mela Ram and his son Rajinder Singh and also the question of abatement of the appeal, if any, after affording due opportunity of being heard to the other party. The parties through learned counsel representing them are directed to appear before learned lower appellate Court on 4th August, 2014. Pending application(s), if any shall also stand disposed of.

8. An authenticated copy of this judgment be sent to learned lower appellate Court (Additional District Judge, Una, Camp at Amb), for compliance and being taken on record.