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**(1953) 09 AHC CK 0018**

**Allahabad High Court**

**Case No:** Civil Revision No. 1055 of 1953

Krishna Behari Goel

APPELLANT

Vs

Raj Mangal Persad and Others

RESPONDENT

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**Date of Decision:** Sept. 18, 1953

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 1, Order 22 Rule 10

**Citation:** AIR 1954 All 182

**Hon'ble Judges:** Desai, J

**Bench:** Single Bench

**Advocate:** Vindheshwari Pd, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Desai, J.

The applicant challenges the order of the trial Court impleading the opposite parties as plaintiffs along with the original plaintiff.

2. The suit was instituted by Sukhhu against the applicant for an injunction to restrain him from interfering with his possession over certain occupancy tenancy. During the pendency of the suit Sukhhu died and Shrimati Surjita and others applied for being brought on the record as his legal representatives. While that application was pending they transferred their interest in the property in dispute to the opposite parties. Thereupon the opposite parties applied for leave of the Court to carry on the suit under Order 22, Rule 10. Their application was opposed by the applicant who contended that the assignment of occupancy rights in their favour by Surjita and others was invalid, that under Order 22, Rule 10 an assignee from the original plaintiff or defendant can be granted permission, but not an assignee from, a legal representative of the original plaintiff and that the right that the plaintiff had claimed was a personal right which did not survive his death. The application of the

opposite parties was allowed by the trial Court and the opposite parties have now been added as plaintiffs.

3. The view taken by the trial Court is correct. There is no justification for holding that the provision in Order 22, Rule 10 applies to a devolution, assignment or creation of an interest by the original plaintiff and not by his legal representative. The words "plaintiff" and "defendant" are not used in that provision at all. It simply refers to assignment, creation or devolution of any interest; this means that it applies in the case of every assignment, creation or devolution of an interest, whether by the original parties to the suit or by their legal representatives. There would have been no justification for making any distinction between an assignment, creation or devolution of an interest by the original parties to the suit and an assignment etc. by legal representatives of the original parties. Therefore, it could not have been contemplated by the Legislature that the words "an assignment etc." refer to an assignment by the original parties and not by their legal representatives.

Reliance was placed upon --"Manindra Chandra Nandi v. Ram Kumar Lal Bhagat" AIR 1922 P.C. 304 (A). The question whether the provision of Order 22, Rule 10 applies to an assignment etc. by the original parties or also an assignment by their legal representatives did not arise before their Lordships of the Judicial Committee and their Lordships never held that it applies to an assignment by the original parties and not to an assignment by their legal representatives. In the case before their Lordships there was only a lease granted by a defendant and that lease was held to be not an assignment, creation or devolution of any interest within the meaning of Order 22, Rule 10. When there was no assignment etc. in that case the other question, whether an assignee from a legal representative of an original party can apply or not, did not arise. When their Lordships, while explaining the provision, remarked on p. 306 that :

"The order contemplates cases of devolution of interest from some original party to the suit, whether plaintiff or defendant, upon some one else",

they did not intend to say that it contemplates cases of devolution of interest only from the original parties to the suit and not from their legal representatives. In --"Champalal Bansilal v. Mt. Sona Eai" AIR 1946 Nag 164 (B), the above quoted observation of their Lordships was relied upon. In that case the application under Order 22, Rule 10 was made by an assignee from one claiming to be an heir of the deceased plaintiff, but the so-called heir had not applied for substitution of his name in place of that of the deceased plaintiff. It was found by the Courts that the so-called heir was not the heir of the deceased plaintiff and that consequently the applicants were not entitled to be substituted under Order 22, Rule 10.

Thus in that case also the question whether an application under Order 22, Rule 10 by an assignee from a legal representative of a deceased party can be made or not did not arise. The application of the so-called assignees would have been dismissed

on merits even if it was found that he was entitled to apply under Order 22, Rule 10. He would have failed on merits because there was no devolution of interest in his favour at all. No other case I was referred to in support of the contention. I hold that one claiming to be an assignee from a legal representative of a deceased party is entitled to apply under Order 22, Rule 10.

4. The next contention was that the assignment in favour of the opposite parties was invalid. Though this question was raised before the trial Court, it has not given any finding on it. It is not known if the applicant pressed this objection before it. The appellate Court does not mention anything about this objection and evidently it was not pressed before it. The occupancy rights were transferred by Surjita etc. in favour of the opposite parties on 16-7-1952. Leaving aside the question whether on 16-7-1952 occupancy rights could be transferred or not, I am of the opinion that it was not obligatory upon the trial Court to decide the question. At the moment it was concerned only with the question whether the opposite parties should be given permission to continue the suit or not. They claimed to be assignees & as assignees they could be granted permission. Whether they could get the relief or not was a different question to be answered after the suit was tried.

At that time the question would arise whether the assignment in their favour was valid or not. If the assignment was found to be invalid they would not be granted the relief even if they were added as plaintiffs. The addition of their names in the title of the suit did not mean that the assignment in their favour was valid and that they must get the relief. Consequently it appears to me that it was not essential for the trial Court to decide the question of the validity of the assignment at this stage. On their being impleaded as plaintiffs, it will be open to the applicant to raise the question of the validity and to plead that they were not entitled to the relief as assignees. Whether the assignment was valid or not would then be an issue in the suit itself.

5. The suit was not of a personal nature at all. Sukhhu did not claim any personal right. The injunction sought was that the applicant should not interfere with his possession over the property in dispute. A suit claiming injunction of this nature did not abate on the death of the plaintiff. The cause of action survived to his legal representative who came in possession of the property in dispute. In --"Josiam Thiruvengada v. Sami Iyengar" 5 Ind Cas 937 (Mad) (C), the injunction sought was to restrain the defendant from interfering with the plaintiff's right to stand at a particular place in a certain temple and that was held to be a personal action which died with the plaintiff. The injunction sought in the present case was of a different nature.

6. There is no force in this application and it is dismissed.