

(1972) 03 AHC CK 0017

Allahabad High Court

Case No: Civil Revision No's. 1580 and 1762 of 1967

Sri Ram Prasad

APPELLANT

Vs

The State Bank of Bikaner and
Others

RESPONDENT

Date of Decision: March 21, 1972

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 4, Order 22 Rule 9

Citation: AIR 1972 All 456 : (1972) 42 AWR 624

Hon'ble Judges: J.S. Trivedi, J

Bench: Single Bench

Advocate: A. Banerji, for the Appellant; M.P. Mehrotra, for the Respondent

Final Decision: Dismissed

Judgement

J.S. Trivedi, J.

Plaintiff opposite party, State Bank of Bikaner had filed a suit on 4-10-66 against Seth Srinivas Murarka and others for the recovery of Rupees 2,67,147.20 on the basis of a mortgage. Sri Ram Prasad, a transferee of some of the mortgaged property was also impleaded as a defendant. Sri Bam Prasad filed a writ petition in the Hon"ble High Court and proceedings in the suit were stayed. The writ petition was disposed of on 7-4-66 and the stay order was vacated. During the pendency of the writ petition on 1-2-66 Srinivas Murarka died. No steps were taken for bringing his legal representatives on record in the writ petition. The record was received in the Court below on 1-10-66. On 11-10-66 the plaintiff opposite party, Bank of Bikaner moved an application under Order 22, Rule 4 and Order 6, Rule 17, C. P. C., mentioning therein that the sons of Srinivas Murarka were already on record as defendants 2 to 4. It was also prayed that the two daughters, Smt. Durga Bai and Ram Bai be added as legal representatives of the deceased Srinivas Murarka. An application u/s 5 of the Limitation Act was also given. The condonation of delay was sought on the ground that the deponent who described himself as Manager of the

Bank posted at Kanpur and doing pairvi on behalf of the plaintiff, or any other officer of the Bank had no knowledge about the death of Srinivas Murarka before 1-10-66 when the case was listed at Rae Bareilly. The affidavit further showed that it was only on 8-10-66 that the deponent who was the pairkar on behalf of the Bank could ascertain the names of the deceased's daughters. The application was opposed. The learned Civil Judge condoned the delay and allowed the application with the direction that the two daughters of the deceased will also be brought on record as legal representatives of the deceased Srinivas Murarka, hence this revision.

2. Learned counsel for the applicant has contended that the suit had abated against Srinivas Murarka when all the legal representatives of the deceased were not brought on record within the prescribed period and no application has been made for setting aside the abatement. Reliance has been placed by him on [The State of Punjab Vs. Nathu Ram](#), Sri Chand v. Jagdish Pershad Kishan Chand AIR 1966 SC 1427 and [Swaran Singh Puran Singh and Another Vs. Ramditta Badhawa \(Dead\) and Others](#),

3. The cases relied upon by the learned counsel for the applicant only lay down that where an appeal abates against a deceased the appeal becomes incompetent against other persons if the decree under appeal is joint and indivisible and is likely to result in two inconsistent decrees. The proposition laid down in the aforesaid three cases cannot be doubted- The question for determination is whether the appeal stood abated on the death of Srinivas Murarka when some of his legal representatives i. e. the sons were already on record. u/s 2(11) C. P. C. :

"Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued."

It cannot be denied that the sons who were already on record were some of the legal representatives of the deceased and if the appellant thought that they represented the estate of the deceased the suit or the appeal would not stand abated because some legal representatives were left to be impleaded.

4. It is well settled now that if there are several legal representatives, it is sufficient if at least one of them is impleaded under Order 22, Rule 4, C. P. C. If a bona fide application within time made for substitution of some of the heirs only is sufficient to keep the suit alive, there is no reason why the same principle should not hold good in a case where some of the heirs are already on record. Moreover, as remarked earlier, an application for condoning the delay and bringing on record left over legal representatives was also made on 11-10-66 and the trial Court has rightly condoned the delay and allowed the application for substitution. There does not appear to be any error much less jurisdictional error in the disposal of the two

applications.

5. Learned counsel for the applicant has next contended that the application purports to be under Order 22, Rule 4 and not under Order 22, Rule 9, C. P. C. and in the absence of a prayer for setting aside the abatement the application under Order 22, Rule 4, C. P. C., was not maintainable. The argument of the learned counsel for the applicant is fallacious. If there had been no abatement there could be no question of setting aside the abatement. Moreover, in a case where an applicant applies for condoning the delay and for bringing on record the legal representatives, a prayer of setting aside the abatement is implicit in the prayer for substitution.

6. Lastly it has been contended that the application purports to have been given on behalf of the State Bank of Bikaner and Jaipur when the suit is only on behalf of the State Bank of Bikaner. In the Rejoinder-Affidavit filed by Sri H. R. Khanna it has been clearly stated that the nomenclature of the Bank has been changed from State Bank of Bikaner to the State Bank of Bikaner and Jaipur by virtue of a notification dated 18-12-62 made u/s 3-A of Central Act 38 of 1959. The application moved by the State Bank of Bikaner as State Bank of Bikaner and Jaipur does not suffer from any infirmity or illegality.

7. This revision, therefore, has no force and is accordingly dismissed with Costs. The suit has been pending since 1956. The office will return the record of the suit forthwith to the trial Court who is directed to dispose of the suit expeditiously. The stay order shall stand vacated.