
Ram Kumar and Another Vs Additional District Judge and Others

C.M.W.P. No. 44792 of 2010

Court: Allahabad High Court

Date of Decision: Aug. 6, 2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 9 Rule 13

Citation: (2011) 2 ADJ 770 : (2011) 112 RD 173

Hon'ble Judges: Krishna Murari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Krishna Murari, J.

Shri T.P. Bharadwaj holding brief of Shri Vishesh Kumar Gupta has made a request to adjourn the case. The matter

was heard at great length on 5th August, 2010. On the request made by Shri Vishesh Kumar Gupta, the matter was adjourned for after lunch

session in order to enable him to look into the decision referred to in the impugned judgment in Rani Choudhury v. Lt. Col Suraj Jit Choudhury.¹

However, after lunch he did not appear. The matter was posted for today and again, adjournment has been sought. Prayer made is refused.

2. The sole controversy in this case is as to whether after dismissal of appeal filed against the decree, whether an application is maintainable under

Order IX, Rule 13, CPC The issue is clearly covered by the decision of the Hon"ble Apex Court in the case of Rani Choudhury (supra), wherein it

has been held as under:

A plain reading of the Explanation clearly indicates that if any appeal against an ex parte decree has been disposed of on any ground other than the

ground that the Appellant has withdrawn the appeal, no application for setting aside the ex parte decree under Order IX, Rule 13 will be

entertained. The words used in the Explanation are clear and unambiguous. The language used in the Explanation clearly suggests that where there

has been an appeal against a decree passed ex parte and the appeal has been disposed of on any ground other than the ground that the Appellant

has withdrawn the appeal, no application shall lie under Order IX, Rule 13 for setting aside the ex parte decree.

3. In the case in hand, suit filed by the Plaintiff -Respondent was decreed by the Trial Court by means of ex parte judgment and decree dated

10.10.1980, against which First Appeal was preferred by some of the Defendants, which was partly allowed on 15.7.1982. The matter came up

to this Court in Second Appeal No. 2257 of 1982, which was also dismissed on 10.11.2005. The judgment and decree has been affirmed by the

Hon"ble Apex Court by dismissal of the SLP on 17.4.2006. Thereafter the Petitioner moved an application under Order IX, Rule 13 CPC for

recall of the ex parte judgment and decree on the allegation that they were also legal heirs of the deceased Defendants and were not impleaded

after his death.

4. It is undisputed that the estate of the deceased Defendant was duly represented by some of the heirs, who went up in appeal. Hon"ble Apex

Court in the case of N.K. Mohd, Sulaiman Sahib v. N.C. Mohd. Ismail Saheb and Ors.,¹ in identical situations, held that the principle of

representation of the estate by the heirs who were joined as parties applied to the case and the decree was binding on persons who claimed to be

the sons of the deceased mortgagor and sued for a declaration that the mortgage decree was not binding on them.

5. Same view has been taken by the Hon"ble Apex Court in the case of Harihar Prasad Singh and Ors. v. Balmiki Prasad Singh and Ors.,²

wherein it has been held that the estate of the deceased was fully represented by the heirs, who had been brought on record and these heirs

represented the absent heirs also, who could be equally bound by the result.

6. In view of the law laid down by the Hon"ble Apex Court, the application filed by the Petitioners under Order IX, Rule 13, CPC for recall of the

ex parte decree on the ground that they were also the heirs of the deceased Defendant, who were not impleaded, would not be maintainable and

has rightly been rejected by the two Courts below.

The writ petition being devoid of merit, stands dismissed.