

Bhurey Khan Vs Yaseen Khan (Dead) by Lrs. and Others

Court: Supreme Court of India

Date of Decision: March 20, 1995

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” order 22 rule 4

Citation: (1995) 7 SCALE 351 : (1996) 2 SCC 313 : (1995) 6 SCR 621 Supp

Hon'ble Judges: S. B. Majmudar, J; R. M. Sahai, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The only question that arises for consideration in this appeal is whether in the facts and circumstances of the case the High court was justified in

abating the second appeal for non-IMPICADMENT of some of the heirs of the deceased respondent.

2. Yaseen Khan, one of the respondents expired. An application was filed for bringing on record his widow, six sons and four daughters. Since the

sons were already on record notices were issued to the widow and the daughters only. The notices could not be served, Consequently inc appeal

was dismissed for non-prosecution. An application filed by the appellant for recall of the order was also dismissed. The appellant made another

effort by filing an application together with notices and process fees. This application was also dismissed. Against this order the appellant filed a

special leave petition which was disposed of with the following observation:

We have vended from the record that the order dated 2/11/1984, related to notice in the substitution matter. yaseen Khan was one of the

respondents in the appeal-The High court seems to have dismissed the entire appeal by mistake for non-compliance of the order in the substitution

matter. We, therefore, vacate that order. The order of the High court will be confined to the dismissal of the substitution petition and the second

appeal Shall now be placed before the High court for decision as to whether the appeal could be continued without substitution

3. When the appeal was taken up again in pursuance of the order passed by this court the High court held that since no effective decree could be

passed in the absence of legal heirs of Yaseen Khan who were not brought on record the appeal was liable to be abated

4. We have heard the learned counsel for the parties. After the order dismissing the appeal for non-prosecution was set aside by this court the

parties were relegated to the position as it stood earlier, namely, that the substitution application filed by the appellant for bringing on record the

legal representatives to whom the notices were issued stood dismissed. But that could not furnish valid ground for abating the appeal as the six

sons of Yaseen were already on record. The estate of the deceased was thus sufficiently represented. If the appellant would not have filed any

application to bring on record the daughters and the widow of the deceased the appeal would not have abated under Order 22 Rule 4 of the Code

of Civil Procedure as held by this court in Mahabir Prasad v. Jage Ram. The position, in our opinion, would not be worse where an application was

made for bringing on record other legal representatives but that was dismissed for one or the other reason. Since the estate of the deceased was

represented the appeal could not have been abated.

5. In the result, this appeal succeeds and is allowed and the order abating the second appeal passed by the High court is set aside. The High court

shall now proceed to decide the appeal afresh on merits taking the estate of Yaseen Khan to be represented by his sons in accordance with law.

6. Parties shall bear their own costs.