

(1989) 03 CAL CK 0063

Calcutta High Court

Case No: C.R. No. 3320 of 1987

Shree Arya Dharma Seva Sangh
and Others

APPELLANT

Vs

Jai Iron and Steel Industries

RESPONDENT

Date of Decision: March 8, 1989

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 2(2)
- Societies Registration Act, 1860 - Section 6
- West Bengal Societies Registration Act, 1961 - Section 19, 36

Citation: (1989) 2 CALLT 196

Hon'ble Judges: Sachi Kanta Hazari, J; Amarabha Sengupta, J

Bench: Division Bench

Advocate: S. Tibrewal and Mr. P.L. Agarwal, for the Appellant; S.P. Roychowdhury, Ashoke Banerjee and Mr. B. Boral, for the Respondent

Final Decision: Allowed

Judgement

Amarabha Sengupta, J.

This is an application u/s 115 of the CPC for revision of an order, dated 14.9.87 passed by the Second Assistant District Judge Howrah in Title Suit No. 23 of 1976.

2. The petitioner No. 1 Arya Dharma Seva Sangh, a Society registered under the Societies Registration Act of 1860, along with nine other persons, including one Daluram Rungeta, as Trustees of the said Society instituted the above suit under the West Bengal Premises Tenancy Act for eviction of the respondent-defendant from a premises. After the institution of the suit the said Daluram, one of the Trustees, died. The other Trustees proceeded with the suit. During the pendency of the suit the respondent-defendant filed two petitions before the Court contending by one petition that the entire suit abated inasmuch as the deceased trustee Deluram was not substituted by his legal representatives or successors and by the other petition

that the suit as framed was not maintainable.

3. The Court below considered both the petitions and disposed of them by one order, dated 14.9.87 which is challenged before us. The Court by the impugned order held that the suit abated as a whole and that it was also not maintainable as it had not been instituted by any of such persons as are mentioned in Section 19 of the West Bengal Societies Registration Act of 1961. With these findings the Court below dismissed the suit without costs. The formal decree of dismissal was also subsequently drawn up. On behalf of the respondent a preliminary objection has been raised with regard to the maintainability of the instant application itself u/s 115 of the Code of Civil Procedure. On this point the Learned Counsels of both the parties had addressed us in extension.

4. Abatement of a suit is a legal consequence in certain situations owing to the death of the suitor or the suitors. Abatement does not require any formal order of a Court although the Court may record the abatement. Therefore in the case of abatement of a suit, a formal order dismissing the suit is unwarranted and meaningless too. In the present case the order of dismissal of the suit must therefore, be read in the context of the finding that the suit was not maintainable being defective in form and not on the ground of abatement of the suit.

5. It is contended on behalf of the respondent that inasmuch as the suit has been dismissed by the impugned order, that order amounts to a decree of dismissal of the suit and, therefore, that order is appealable. Consequently in view of sub-section (2) of Section 115 of the Code of Civil Procedure, the present revisional application cannot lie. It is submitted on behalf of the petitioners that the impugned order does not amount to a decree within the meaning of Section 2(2) of the Code of Civil Procedure, inasmuch as by the impugned order no substantive matter in controversy between the parties was adjudicated.

6. We have considered the submissions of both the parties. We are of opinion that the impugned order is cognizable by this Court u/s 115 of the Code of the Civil Procedure and that for the following reasons. By the impugned order no substantive matter in controversy in the suit was decided. The form in which the suit was instituted was found to be defective and therefore, not sustainable. It is only on that score that the suit was dismissed. The court did not go into or decide any substantive point in dispute between the parties. In other words, on the technical ground relating to the form in which the suit was framed, the suit was dismissed. This obviously does not amount to a decision of the case of the parties. The impugned order does not, therefore, amount to a decree within the meaning of Section 2(2) of the Code of Civil Procedure. If so, the impugned order is not an appealable order so as to attract sub-section (2) of Section 115 of the Code of Civil Procedure.

7. It is immaterial that the formal decree has been drawn up on the basis of the impugned order. This view is supported by the case reported in [Chakra Barik and Others Vs. Mst. Jema Biswal and Another](#), . We now go into the merits of the impugned order.

8. In the present case Clause (2) of the Regulations of the Society requires at least five trustees to represent the trust Estate and despite the death of Daluram the strength of the Trustees as plaintiffs never fell below five. Moreover, there is nothing on record to indicate that the vacancy caused by the death of Daluram was filled up. The remaining trustees were and are competent to maintain the suit. Reference may be made in this connection to the cases reported in [Sm. Jarat Kumari Dassi and Others Vs. Shaligram Subhkaran Khemani and Another](#), and AIR 1979 Bom 100. There is also no period of limitation in bringing the successor of the deceased Trustee on record, whenever the successor of the deceased may he or may have been nominated or elected.

9. The suit in our view has not abated. The lower Court acted beyond jurisdiction to record abatement of the suit.

10. The question of the plaintiff Society complying with the provisions of Section 19 of the West Bengal Societies Registration Act cannot arise, because it is neither registered under the State Act nor can it be deemed to have been registered under that Act by invoking Section 36 thereof. As the plaintiff Society stands registered under the Societies registration Act of 1860, the Trustees of the Society can very well institute and maintain the suit in view of Section 6 of the said Act.

11. It is true that the Section 36 of the State Act, the Societies Registration Act of 1860 stands repealed in its application to West Bengal. But now does that matter here? No society is legally bound to itself registered. Moreover, both the State Act and the Central Act under consideration are statutes relating only to registration of societies and matters incidental thereto. A society registered under any of these Acts must follow the provisions of the particular Act under which it is registered. Section 36 of the West Bengal Act cannot be interpreted to mean that a Society registered under the 1860 Act and having its registered office outside the State of West Bengal is debarred from following Sections 6 of that Act for bringing civil actions within West Bengal.

12. Even if the plaintiff society is taken to be a non-registered society in West Bengal, how can the Trustees thereof be denied the right to institute and maintain the suit? Whether the Society is registered or not, the Trustees have the right in their capacity as Trustees to represent the Trust Estate and maintain the suit.

13. In our opinion, the Court below committed an error of law by dismissing the suit on the ground that it had not been instituted by any of such persons as are mentioned u/s 19 of the West Bengal Societies Registration Act. The present Trustees on record as plaintiffs whose number does not fall below 5 were and are

competent to institute and proceed with the suit.

14. We may point out here that, as indicated in the cause title of the instant petition, are other trustee namely. Narayan Dutt Baid has also died and another Trustee namely Nagarmull Parwal has since resigned from his office. Even then, the remaining trustees being 7 in number can represent the Trust Estate in terms of the regulations of the Society and maintain the suit.

15. Accordingly, we set aside the impugned order and hold that the suit has not abated. We further hold that the present Trustees on record can maintain the suit as Trustees of the Society. We further direct that the names of the deceased trustees be struck off the plaint.

16. The Court below will proceed with the suit in accordance with law. The present revisional application is thus allowed and disposed of.

17. The Learned Advocate appearing for the opposite party prays for stay of the Judgment delivered today for four weeks. The prayer is opposed by Mr. Tebriwal appearing on behalf of the petitioner.

18. However, the prayer is considered and is rejected.

Sachi Kanta Hazari, J.

19. I agree.