

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision No.7064/2012/TA/Barmer :

1. Ramu Devi W/o Shri Ram Lal
 2. Smt. Noji Devi W/o Shri Heera Ram
- Both by caste Jat, residents of Village Shembhusar (Bhiyad),
Tehsil Shiv, District Barmer.

... Petitioners.

Versus

1. Jiyo Devi D/o Shri Dhana Ram W/o Shri Rau Ram,
by caste Jat, resident of Village Raj Bera, presently
residing at Village Shembhusar (Bhiyad),
Tehsil Shiv, District Barmer.
2. State of Rajasthan, through Tehsildar Shiv.
3. Chanani Devi D/o Hukma Ram W/o Pura Ram,
by caste Jat, resident of Village Shembhusar (Bhiyad),
Tehsil Shiv, District Barmer.
4. Balotra Bhumi Vikas Bank, through Manager.
5. Manager, Jaipur Thar Gramin Bank, Bhiyad,
Tehsil Shiv, District Barmer.

... Non-Petitioners.

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S.B.

Shri Pramil Kumar Mathur, Member

Present :

Shri Sandeep Jakhar : counsel for the petitioners.

Shri Abhishek Sharma : counsel for non-petitioner no.1.

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Dated : 6th September, 2012

J U D G M E N T

The petitioners who are defendants before the trial court have assailed the order dated 16.8.2012 passed by learned Assistant Collector (Sub Divisional Officer), Shiv (Barmer) in case no.254/2011.

2. Material facts leading to this revision petition are that non-petitioner no.1 has filed a revenue suit against the petitioners and rest of the non-petitioners before the Sub Divisional Officer, Shiv (Barmer) for declaration, partition & permanent injunction under the Rajasthan Tenancy Act, 1955. Petitioners claim that non-petitioner no.1 has filed a suit against a 'dead person' as defendant no.1 Hukma Ram S/o Dhana Ram had died on 18.4.2010 while the suit was presented before the trial court on 16.12.2011.

Therefore, they prayed before the trial court by filing an application to dismissed the suit as the suit was instituted against a dead person.

3. The learned trial court by impugned order dated 16.8.2012 has rejected the application filed by the petitioners and ordered to delete the name of defendant no.1 Hukma Ram from the array of the suit. Aggrieved by this order, present petitioners have filed this revision petition.

4. I have heard learned counsel for the parties at admission stage and perused the record.

5. Learned counsel for the petitioners has vehemently argued that the order passed by the trial court is absolutely illegal being against the settled position of law that no suit against a dead person is maintainable, but ignoring the above settled proposition of law, trial court has wrongfully ordered to delete the name of the deceased defendant Hukma Ram from the array of the suit. He has placed reliance on the following citations :-

2010 (2) RRT page 1207
2012 (1) RRT page 189

6. On the contrary, Shri Abhishek Sharma appearing for the non-petitioner no.1 has submitted that it is true that defendant no.1 Hukma Ram was dead before the institution of the suit, but as the suit has been brought against more than one defendant, then the whole suit cannot be dismissed and the only option is either to implead the legal representatives of the deceased or to delete the name of the deceased defendant. Therefore, this being the settled position of law, the learned trial court has passed the impugned order in just & rightful manner.

7. I have given my thoughtful consideration to the rival contentions and carefully scanned the matter.

8. It is manifest from the perusal of the impugned order that suit has been brought against more than one defendant. It is true that defendant Hukma Ram had actually died on 18.4.2010 before the institution of the present suit. Though originally the petitioner has prayed for abatement of the suit before the trial court, but there can be no question of abatement because

abatement occurs only where death of a party takes place during the pendency of a suit and it is only then that the provisions of Order 22 of the Code of Civil Procedure are attracted thereto. Therefore, the prayer for abatement under Order 22 CPC is entirely misconceived. This is not the case of the petitioners that plaintiff had brought his suit against sole defendant who had died on the date of the institution of the suit. Contrary to it, the original revenue suit had been brought against more than one defendant including present petitioners. In that state of circumstances, it cannot be accepted as a sound position of law that the suit was void ab initio in as much as the suit against the remaining defendants was duly brought.

9. In my considered opinion, when the fact of the death of one of the defendants in a case like the present one happens to be brought to the notice of the court, the proper procedure is to strike out the name of the dead party. Even the Order 1 Rule 10 of the Civil Procedure Code empowers the court to exercise the power to strike out parties, which is being reproduced for the convenience :-

"Court may strike out or add parties - The court may at any stage of the proceedings, **either upon or without the application of either party**, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, **be struck out**, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

10. Under Order 1 Rule 10 of the Code of Civil Procedure the court has the power to strike out or add parties to the suit. However, where the suit is brought against a person who is found to have died before institution of the suit (he being the only defendant), the plaint cannot be amended by bringing his legal representatives on record though the suit may have been filed in ignorance of his death. This is because a suit against a dead man is a nullity. Of course if a suit is against several defendants and only one of them is found to have died before its institution, the entire suit will not fail and can proceed against the other defendants.

11. My above view finds support from the principles enunciated in the following judgments reported in :-

- (i) ILR 1963 page 826
- (ii) AIR 1928 Lahore page 359
- (iii) AIR 1994 Bombay page 74

12. Though I am in respectful agreement with the view taken in the cases relied upon by the learned counsel for the petitioners, but I think the facts of above cases are not parallel to the case in hand; hence can have no application.

13. Therefore, the trial court committed no manifest error in rejecting the application preferred by the present petitioners and striking out the name of deceased defendant no.1 Hukma Ram. Consequently, this revision petition contains no force, hence dismissed at admission stage.

Pronounced in open court.

(PRAMIL KUMAR MATHUR)
Member