

2022 LiveLaw (SC) 845

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SURYA KANT; J., M.M. SUNDRESH; J.
OCTOBER 11, 2022

CIVIL APPEAL No.7145 OF 2022 (Arising out of SLP(C)No.26284 of 2017)
SIRAVARAPU APPA RAO & ORS. versus DOKALA APPA RAO

Code of Civil Procedure, 1908; Order XXII Rule 2 - Where there are more than one plaintiffs, the entire suit cannot be held to be abated on the death of one of the plaintiffs. Referred to: Delhi Development Authority v. Diwan Chand Anand, [2022 LiveLaw \(SC\) 581](#) (Para 8-9)

(Arising out of impugned final judgment and order dated 16-03-2017 in SA No.38/2017 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh)

For Petitioner(s) Mr. Sindoor VNL, Adv. Mr. Raavi Venkata Yogesh, Adv. Mr. Vishnu Shankar Jain, AOR

For Respondent(s) Mr. Nishit Agrawal, AOR Ms. Kanishka Mittal, Adv.

ORDER

1. Leave granted.

2. The instant appeal by way of special leave is directed against judgment and order dated 16.03.2017 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh whereby the High Court dismissed the Second Appeal filed by the appellants herein and held the judgment and decree of the trial court stands nullified by reason of death of one of the plaintiffs and that the suit stood abated.

3. The appellant Nos.1-4 before this Court are brothers whereas appellant No.5 is their sister. The appellants along with one Vemala Chanti jointly filed a suit for declaration of title and recovery of possession against the respondent herein before the learned Junior Civil Judge, Bhimavaram (hereinafter referred to as 'the Civil Court') stating that the father of the respondent Yarakayya was in permissive possession of the subject schedule property by way of a licence, and that after the death of the licensor, the respondent herein continued to be in unauthorized possession of the said schedule property.

4. It is an undisputed fact that during the pendency of the suit, one of the sisters of the appellants, namely, Vemala Chanti passed away on 23.04.2011 and her legal representatives were not brought on record. Regardless thereto, the Civil Court proceeded to decide the suit and decreed the same in favour of the appellants.

5. The respondent challenged the above-stated judgment and decree by way of First Appeal before the III Additional District Judge, Bhimavaram (hereinafter referred to as 'the First Appellate Court'). The First Appellate Court allowed the appeal solely on the ground that one of the plaintiffs, namely, Vemla Chanti having died on 23.04.2011 and as her legal representatives were not brought on record, the suit *qua* her stood abated and since the appellants and the deceased plaintiff jointly made a claim, the decree obtained by the appellants is a nullity. To say it differently, the First Appellate Court viewed that the suit got abated not only against the deceased plaintiff, the said suit also got abated as against the other plaintiff-appellants as the claim was joint.

6. Aggrieved appellants filed a Second Appeal before the High Court but their appeal was also dismissed on the same premise. The High Court viewed that "Since her right in the

property is joint along with the appellants, the dismissal of the suit as against her would result in the dismissal of the suit as against of the appellants also. Otherwise there would be conflicting judgments”.

7. We have heard learned counsel for the parties at a considerable length and gone through the material placed on record.

8. The main question for consideration is whether on the non-substitution of legal representatives of some of the plaintiff – owners of the land and/or whether on demise of the some of the respondents during the pendency of the first appeal, the entire appeal would stand abated or it will be so only in respect of the particular deceased respondent. This question, in our considered view, has been answered in favour of the plaintiff - appellants by this Court in more than one decisions. A coordinate Bench of this Court recently in **Delhi Development Authority vs. Diwan Chand Anand and Others, (2022) SCC Online SC 855**, has held as under:

“36. Thus, as observed and held by the Court:

(i) The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives;

(ii) If there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants (Order 22 Rule 2);

(iii) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. Where within the time limited by law no application is made under subrule 1 of Order 22 Rule 4, the suit shall abate as against the deceased defendant;

(iv) The provision of Order 22 shall also apply to the appeal proceedings also.”

9. In our considered view also, where there are more than one plaintiffs, the entire suit cannot be held to be abated on the death of one of the plaintiffs.

10. For the reasons aforesaid, we allow this appeal, set aside the judgment and decree dated 29.04.2016 passed by the III Additional District Judge, Bhimavaram in Appeal Suit No.19 of 2014 as well as the judgment and decree dated 16.03.2017 passed by the High Court in Second Appeal No.38 of 2017 and remit the matter to the III Additional District Judge, Bhimavaram for fresh adjudication of the First Appeal on merits and in accordance with law.

11. It is clarified that we have not expressed any opinion on the merits of the case and the parties will be at liberty to advance their arguments before the First Appellate Court.

12. The parties are directed to appear before the First Appellate Court on 15.11.2022.

13. The *status quo* order passed by this Court on 22.09.2017 shall continue to operate till the decision of First Appeal, as directed above.