

**BEFORE**  
**HON'BLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioners : Mr. G.N. Sahewalla .... Senior Advocate.  
Ms. S. Katakey. ... Advocate  
For the respondents : Mr. S.D. Purkayestha. .... Advocate.

Date of hearing : 05.01.2022  
Date of judgment : 25.01.2022

**JUDGMENT AND ORDER (CAV)**

Heard Mr. G.N. Sahewalla, learned Senior Counsel assisted by Ms. S. Katakey, learned counsel appears on behalf of the petitioners. I have also heard Mr. S.D. Purkayastha, learned counsel appearing for the respondents.

**2.** This is an application under Article 227 of the Constitution of India challenging the order dated 21.06.2019 passed by the Civil Judge No.1, Cachar, Silchar in Title Appeal No.14/2000.

**3.** The question which is involved in the instant matter is as to whether the non-substitution of some of the legal representatives of the original plaintiff as well as non-substitution of some of the legal representatives of the original defendant no.2 would amount to abatement of the appeal being Title Appeal No.14/2000 as a whole or for that matter the claim of rights being severable, the Appeal shall not abate.

**4.** This proceeding arises out of a suit being Title Suit No.189/1977 filed by one Surendra Narayan Sukul who happens to be the predecessor-in-interest of the respondents. The said suit was filed against one Deochand Sarda who happens to be the predecessor-in-interest of the petitioners before this Court. The said suit was a suit for eviction of the defendant no.1 i.e. Deochand Sarda on the ground of non-payment/default in payment of the rent and for delivery of khas possession of the suit premises. The defendant no.2 who was subsequently impleaded in the said suit took a stand that the plaintiff did not have any right over the suit premises. Though every detail may not be necessary which led to the passing of the impugned order but what is necessary to take note of that the said suit filed by the predecessor-in-interest of the respondents in the instant proceeding was dismissed and thereupon Title Appeal No.14/2000 was filed which was also dismissed. Pursuant thereto a Revision was filed before this Court which was registered and numbered as CRP No. 381/2002 which was also dismissed and thereupon a Special Leave Petition was filed before the Supreme Court being SLP(C) No.15192/2014 which subsequently was converted into Civil Appeal No.9956/2018 and by a judgment and order dated 25.09.2018 passed in the said Civil Appeal the matter was remanded to the First Appellate Court with a direction to dispose of the same within a period of 6 (six) months from the date of receipt of the records and the First Appellate Court received the record on 26.11.2018.

**5.** It is further apparent from a perusal of the impugned order that on 20.12.2018 the legal representatives of the deceased plaintiff i.e. Biswajit Sukul and 14 others were substituted before the First Appellate Court without any objection. However, in doing so there was no prayer for substituting one of the

sons of the original plaintiff Satyajit Sukul and his heirs as well as one daughter of the plaintiff Ratna Trivedi and her heirs. Further to that, some of the legal representatives of the original defendant no.2 namely Suchit Sarda @ Sujit Sarda, Gouri Shankar Sarda and Uma Sarda were also not substituted.

**6.** This aspect of the matter was brought to the attention of the First Appellate Court by the predecessor-in-interest of the present petitioners i.e. the original defendant no.1 who was the Respondent No.1 in the said appeal by filing a Petition No.1728/8 before the First Appellate Court thereby praying that the entire appeal stands abated on the ground of not substituting the legal representatives of the persons named hereinabove. The Respondents herein who were the Appellants in Title Appeal No.14/2000 filed their written objection to the said petition challenging the maintainability of the said application and denying the contents thereof. The First Appellate Court vide the impugned order dated 21.06.2019 rejected the said application filed by the original defendant no.1 holding *inter alia* that the appeal had abated only so far as the LRs of the deceased appellant i.e. appellant's son Satyajit Sukul and the appellant's daughter Ratna Trivedi. As regards the non-substitution of the deceased respondents Suchit Sarda @ Sujut Sarda, Gouri Shankar Sarda and Uma Sarda, the First Appellate Court was of the opinion that the LRs of the deceased defendant no.2 conjointly constituted a unit collectively representing the interest of the deceased defendant no.2 and therefore the death of one or more of the LRs of the deceased defendant no.2 who were already impleaded in the suit would not result in abatement of the appeal as a whole. It is against the said order dated 21.06.2019 whereby the Petition No.1728/8 was rejected, the original defendant no.1 as the petitioner who was subsequently substituted by

the present petitioners have approached this Court under Article 227 of the Constitution of India.

**7.** Mr. G.N. Sahewalla, learned Senior Counsel for the petitioners submits that the non-substitution of the legal representatives of Satyajit Sukul and Ratna Trivedi as well as the non-substitution of some of the legal representatives of the original defendant no.2 amounts to abatement of the appeal as regards the said persons and consequently as the rights involved in the said appeal are not severable the appeal being Title Appeal No.14/2000 stands abated as a whole. In that regard he referred a judgment of the Supreme Court rendered in the case of *Hemareddi (Dead) Through Legal Representatives vs. Ramachandra Yallappa Hosmani and Others* reported in (2019) 6 SCC 756 and in that regard referred to paragraph nos. 31, 32 and 33 of the said judgments.

**8.** On the other hand, Mr. S.D. Purkayestha, learned counsel for the respondents submitted that the contention raised by the petitioners is totally misconceived inasmuch as, the legal representatives of the original appellant who have not been substituted have not suffered any decree as the decree passed by the Trial Court was when the original plaintiff was very much alive and as such the contention raised by the petitioners that there would be conflicting decrees does not arise in the facts of the case. He further submitted that the suit is a suit pertaining to landlord tenant dispute and each co-owner after the death of the original plaintiff has an independent right to file a suit or continue with the suit and it is the mandate of law that all co-owners need not join in an eviction proceedings initiated by one of them. He further submitted that the question of the appeal having been abated for not substituting some of

the legal heirs of the original defendant no.2 as contended by the petitioners is also misconceived inasmuch as, the instant suit is a suit for eviction of the defendant no.1 who are the present petitioners and the stand of the defendant no.2 that he had a right over the suit land had already been negated by all the Courts including the Supreme Court and now the issue which is pending before the First Appellate Court is as to whether the respondents now happens to be the appellants are entitled for a decree for eviction against the present petitioners before this Court and as such the non-substitution of all the legal representatives of the original defendant no.2 cannot be held to be fatal. He further submitted that even otherwise the original defendant no.2 had already been represented by the proforma respondents herein in the Appeal as a unit. In that regard Mr. Purkayestha, learned counsel placed before this Court the following judgments :

- (i) *Dolai Maliko and Others vs. Krushna Chandra Patnaik and Others*, reported in AIR 1967 SC 49;
- (ii) *Sri Ram Pasricha vs. Jagannath and Others*, reported in (1976) 4 SCC 184;
- (iii) *Kanta Goel vs. B.P. Pathak and Others*, reported in (1977) 2 SCC 814;
- (iv) *Suresh Kumar Kohli vs. Rakesh Jain & Another*, reported in (2018) 6 SCC 708 and
- (v) *Sardar Amarjit Singh Kalra (Dead) by LRS. and Others vs. Pramod Gupta (Smt) (Dead) by LRS. and Others*, reported in (2003) 3 SCC 272

**9.** From the contentions so raised by the parties, the question which arises before this Court is as to whether the appeal abates as a whole for not substituting some of the legal representatives of the original plaintiff in the appeal and as to whether non-substituting some of the legal representatives of

the original defendant no.2 would be fatal to the adjudication of the appeal. Let this Court first take into consideration the impact on the appeal for not substituting the legal representatives of the original appellant/plaintiff. At the time when the Title Suit No.189/1977 was dismissed vide the judgment and decree dated 23.12.1999 the original plaintiff was alive and he filed the said appeal before the First Appellate Court which was registered and numbered as Title Appeal No.14/2000. Thereupon though the said Title Appeal No.14/2000 was initially dismissed as well as the CRP 381/2002 was dismissed but the Supreme Court vide its judgment dated 25.09.2018 remanded the case by setting aside all the judgments passed by the First Appellate Court as well as by this Court in Revision to the First Appellate Court for fresh adjudication on merits. Under such circumstances when the matter was taken up by the First Appellate Court the original plaintiff was substituted by the First Appellate Court vide an order dated 20.12.2018 though Satyajit Sukul (since deceased) or his heirs as well as Late Ratna Trivedi and her heirs were not substituted in the appeal but there was no decree which the said persons had suffered. Now at this stage it would be relevant to take note of the judgment of the Supreme Court in the case of *Kanta Goel (supra)* wherein at paragraph no.7 the Supreme Court held that the co-owner is as much as an owner of the entire property as a sole owner of the property is and a suit for eviction is maintainable in absence of the other co-owners on record. Paragraph 7 of the said judgment is quoted hereinbelow :

*“7. This Court, in Sri Ram Pasricha, (1976 4 SCC 184) clarified that a co-owner is as much an owner of the entire property as any sole owner of the property is: "Jurisprudentially, it is not correct to say that a co-owner of property is not its owner. He owns every part of the composite property*

*along with others and it cannot be said that he is only a part owner or a fractional owner of the property .... It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises, is not the owner of the premises within the meaning of Section 13(1) (f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of Section 13(1) (f) as long as he is a co-owner of the property, being at the same time acknowledged landlord of the defendants." That case also was one for eviction under the rent control law of Bengal. The law having been thus put beyond doubt, the contention that the absence of the other co-owners on record disentitled the first respondent from suing for eviction, fails. We are not called upon to consider the piquant situation that might arise if some of the co-owners wanted the tenant to continue contrary to the relief claimed by the evicting co-owner."*

**10.** From the said judgment it would therefore be clear that each co-owner has a separate independent right to file a suit for eviction. In the instant case the respondents/present appellants before the First Appellate Court became the co-owner of the property in question after the death of the original plaintiff which happened much after the suit initially was decreed by the Trial Court and as such each of the appellants/the respondents herein have an independent right to seek eviction.

**11.** It may also be relevant to take note of the judgment of the Supreme Court in the case of *Dolai Maliko (supra)* wherein three Judges' Bench of the Supreme Court at paragraph 4 held that unless there is a fraud or collusion or there are other circumstances which indicate that there has not been a fair or real trial or that against the absent heir there was a special case which was not and could not be tried in the proceedings, there is no reason why the heirs who have applied for being brought on record should not be held to represent the entire

estate including the interests of the heirs not brought on record. The Supreme Court further went on to say that if by oversight or on account of some doubt as to who are the heirs, any heir of the deceased appellant is left out that in itself would not be reason for holding that the entire estate of the deceased is not represented unless circumstances like fraud or collusion exist. The relevant paragraphs 4, 5 and 11 are quoted hereinbelow :

*“4. It has been contended on behalf of the appellants that the principle of these cases applies to the present case and the fact that three of the heirs were left out would make no difference as the entire estate of Dolai deceased must be held to be represented by the widow and the major son who were brought on the record. It will be noticed that there is one difference between the present case and the two cases on which reliance has been placed on behalf of the appellants. This is not a case where a plaintiff or an appellant applies for bringing the heirs of the deceased defendant or respondent on the record, this is a case where one of the appellants died and his heirs have to be brought on record. In such a case there is no question of any diligent or bona fide enquiry for the deceased appellant's heirs must be known to the heirs who applied for being brought on the record. Even so we are of opinion that unless there is fraud or collusion or there are other circumstances which indicate that there has not been a fair or real trial or that against the absent heir there was a special case which was not and could not be tried in the proceeding, there is no reason why the heirs who have applied for being brought on record should not be held to represent the entire estate including the interests of the heirs not brought on the record. This is not to say that where heirs of an appellant are to be brought on record all of them should not be brought on record and any of them should be deliberately left out. But if by oversight or on account of some doubt as to who are the heirs, any heir of a deceased appellant is left out that in itself would be no reason for holding that the entire estate of the deceased is not represented unless circumstances like fraud or collusion to which we have referred above exist.*

*5. In the present case there is no question of any fraud or collusion, nor is there anything to show that there had not been a fair or real trial, nor can it be said that against the absent heir there was a special case which was not and could not be tried in the proceeding in his absence. It may also be noticed that*

*the respondents themselves did not object in the court of the Subordinate Judge that some of the heirs of deceased Dolai had been left out and the case proceeded there as if the estate of Dolai deceased was represented in full by the heirs brought on record. It was only in the High Court that it was discovered that Dolai had left three other heirs who had not been brought on the record. In the circumstances we are of opinion that the estate of Dolai was fully represented by the heirs who had been brought on the record in the Subordinate Judge's court and that these heirs represented the absent heirs also who would be equally bound by the result, and there is no reason to hold that the appeal before the Subordinate Judge had abated on that ground.*

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*11. We are of opinion that these cases have been correctly decided and even where the plaintiff or the appellant has died and all his heirs have not been brought on the record because of oversight or because of some doubt as to who are his heirs, the suit or the appeal, as the case may be, does not abate and the heirs brought on the record fully represent the estate unless there are circumstances like fraud or collusion to which we have already referred above."*

**12.** Thus from the above judgment quoted it would be seen that nor arraying/substituting all the legal representatives of the plaintiff would not lead to abatement of the appeal as a whole and more so in case of the present one wherein each of the appellants have an independent severable right to claim eviction of the defendant no.1/the petitioners before this Court. At this stage, it is also relevant to take note of the judgment relied upon by Mr. Sahewalla, learned Senior Counsel for the petitioners i.e. *Hemareddi (supra)*. It would be seen from a perusal of the facts in the said judgment that the suit filed in the said case was a suit to declare that the defendant no.1 therein was not the adopted son and he had no title or interest over the suit property and for prohibitory injunction against the defendant not to dispossess the joint

possession of the suit agricultural land of the plaintiffs and the defendant no.2. The suit property in the case of *Hemareddi (supra)* were the properties of the joint family of Govindareddi and his sons. The said plaintiff who filed the earlier suit also filed another suit for declaration that the second defendant in the said suit had no right in the property. As the both suits were dismissed the plaintiff therein filed two appeals. It was during the pendency of the said appeal that the second plaintiff expired and the LRs of the second appellant were not brought on record and the Karnataka High Court vide an order dated 02.09.2006 held that the appeal would abate not only *qua* the second appellant/plaintiff but as a whole and accordingly the matter reached the Supreme Court in the said case. It is in that regard the observations were made by the Supreme Court in paragraph nos. 30, 31, 32 and 33 which have been referred to by the learned counsel holding *inter alia* that permitting the appeal of the appellant no.1 to continue while the appellant no.2/second plaintiff against whom the appeal has already been abated would result in passing of contradictory and inconsistent decrees. The said judgment however is not applicable to the instant case inasmuch as, there was no decree being passed against Satyajit Sukul or Ratna Trivedi. The appeal has to be continued, therefore, as if the said Satyajit Sukul or Ratna Trivedi had not participated in the said proceedings. The question of appeal abating in so far as the Satyajit Sukul or his legal representatives or Ratna Trivedi or their legal representatives in the opinion of this Court cannot arise inasmuch as, they were not part of the Appeal proceedings.

**13.** As regards to the second question as to whether the appeal would abate for not substituting the legal representatives of Suchit Sarda, Gouri Shankar Sarda and Uma Sarda who were the legal representatives of the original

defendant no.2, it is relevant to take note of that the suit was filed for eviction of the defendant no.1 and there was no relief whatsoever claimed against the defendant no.2. A perusal of the written statement of the defendant no.2 shows that he had claimed an independent right over the suit property supporting the case of the defendant no.1 but admittedly there was no counter claim filed by the defendant no.2. It is also apparent on record that some of the legal representatives of the defendant no.2 are already there on record. At this stage it may be relevant to rely upon the judgment of the Supreme Court rendered in the case of *Kanhaiyalal vs. Rameshwar and Others*, reported in (1983) 2 SCC 260 wherein the Supreme Court at paragraph 6 held that failure to implead the legal representatives of a proforma respondent against whom no relief is claimed would not have the effect of abating the appeal preferred by the appellants therein. Paragraph 6 of the judgment is quoted hereinunder :

*“6. Mr. Naunit Lal raised two contentions. But we propose to examine second of the two contentions. The first contention is that the provisions of Order XXII, Rules 3, 4 & 8 of the C.P.C. do not apply to the execution proceedings. The question is not whether the heirs were not impleaded in execution proceedings but whether the appeal has abated on account of the failure of appellant to seek substitution of the deceased respondent No. 2 pending the appeal. We do not propose to examine the first contention. But the second contention which we are inclined to accept is sufficient to dispose of this appeal. Mr. Naunit Lal submitted that the appellant is the heir of the surety, contesting surety's liability and the appellant was not seeking any relief against the original judgment-debtor who was a pro forma respondent. It was urged that the failure to implead the legal representatives of a pro forma respondent against whom no relief is claimed would not have the effect of abating the appeal preferred by the present appellant. The heir of surety was contesting his liability to satisfy the decretal debt. The appellant claimed no relief against the pro forma judgment debtor. The judgment-debtor is contesting his liability with which we are not concerned. By the death of pro forma respondent judgment debtors right to sue does not revive against him or his heirs and their presence was*

*unnecessary and the appeal can proceed in their absence. Therefore, the High Court was clearly in error in holding that the appeal would abate on the sole ground that the heirs of the deceased judgment debtor pro forma respondent No. 2 were not substituted in time. No substitution was necessary and appeal could have been proceeded within the absence of the deceased judgment-debtor and disposed of on merits.”*

**14.** From a perusal of the said quoted paragraphs of the said judgment and applying the same to the facts of the instant case wherein it would be seen that there was no relief sought for against the defendant no.2 and the defendant no.2 also did not file any counterclaim and further taking into consideration that the claim made by the defendant no.2 has been negated by all the Courts including the Supreme Court and the matter has been remanded back to the First Appellate Court to decide as to whether the present respondents who are the appellants before the First Appellate Court are entitled to a decree against original defendant no.1 now against the present petitioners, the opinion of this Court that not substituting the legal heirs of Suchit Sarda, Gourisankar Sarda and Uma Sarda would not be fatal to the appeal filed by the respondents herein who are appellants in Title Appeal No.14/2000. At this stage the judgment of the Constitution Bench of the Supreme Court rendered in the case of *Sardar Amarjit Singh Kalra (supra)*. At paragraph 26 can be taken note of which is quoted hereinbelow :

*“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 of CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination into an effective*

*adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the Khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in Jamabandhi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even de hors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of other remaining appellants for no fault of theirs. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and brining on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of Court to do real, effective and substantial justice. Viewed in the light of the fact that each one of the appellants had an independent and distinct right of his own not interdependant upon the one or the other of the appellants, the dismissal of the appeals by the High Court in their entirety does not constitute a sound, reasonable or just and proper exercise of its powers. Even if it has to be viewed that they had a common interest, then the interests of justice would require the remaining other appellants being allowed to pursue the appeals for the benefit of those others, who are not before the Court also and not stultify the proceedings as a whole and non-suit the others, as well."*

**15.** A perusal of the said quoted paragraph of the said judgment would show the provisions contained in Order XXII would lend credit and support the view that they are devised to ensure the continuation and culmination into an effective adjudication and not to retard the further progress of the proceedings

and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remains intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order XXII are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice.

**16.** Consequently, no interference is required under Article 227 of the Constitution of India to the impugned order dated 21.06.2019 whereby the Petition No.1728/8 in view of the findings and observations made hereinabove.

**17.** The interim order dated 22.07.2019 stands vacated in view of the disposal of the Revision application and the parties are directed to appear before the First Appellate Court on 11.02.2022. Taking into consideration that there was a specific direction for disposal of the said appeal within a period of 6 (six) months by the Supreme Court the First Appellate Court is requested to expeditely dispose of the said appeal and preferably within a period of 2 (two) months from the date of appearance of the parties.

**18.** The instant petition accordingly stands dismissed however with no cost.

**JUDGE**

**Comparing Assistant**