K. Rudrappa vs Shivappa on 30 August, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4346, 2004 AIR SCW 5106, 2004 AIR - KANT. H. C. R. 2987, (2004) 4 ALLMR 1181 (SC), (2004) 2 CLR 483 (SC), (2004) 5 CTC 365 (SC), 2004 (8) SRJ 294, (2004) 9 JT 327 (SC), 2004 (6) SLT 357, 2004 (9) JT 327, 2004 (4) ALL MR 1181, 2004 (2) CLR 483, 2004 (5) CTC 365, 2004 (2) HRR 615, 2004 (12) SCC 253, (2004) 22 ALLINDCAS 35 (SC), (2004) 2 CIVILCOURTC 383, (2004) 2 KER LT 48, (2004) 1 KER LT 687, (2004) 17 ALLINDCAS 841 (KER), (2004) 3 ICC 467, (2004) 1 KHCACJ 1 (KER), (2005) 1 LANDLR 427, (2004) 6 SUPREME 420, (2005) 1 CIVILCOURTC 627, (2005) 1 KANT LJ 325, (2005) 1 WLC(SC)CVL 234, (2005) 1 BLJ 137, (2005) 2 CIVLJ 347, (2005) 1 DMC 320, (2004) 6 ANDHLD 54, (2004) 23 INDLD 148, (2004) 57 ALL LR 269, (2004) 4 CURCC 39, (2004) 4 ICC 582, (2004) 3 RECCIVR 450, (2004) 19 ALLINDCAS 309 (KER), (2004) 4 CIVLJ 467

Bench: Arijit Pasayat, C.K. Thakker

```
           CASE NO.:
Appeal (civil)  5568 of 2004

PETITIONER:
K. RUDRAPPA

RESPONDENT:
SHIVAPPA

DATE OF JUDGMENT: 30/08/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
```

JUDGMENT 2004 Supp(3) SCR 953 The Judgment of the Court was delivered by THAKKER, J. : Leave granted.

The appellant herein being aggrieved by the order passed by the District Judge, Davangere on 24th August, 2002 in Misc. Case No. 32 of 2000 rejecting the applications of the appellant and confirmed by the High Court on 4th February, 2003 in Civil Revision No. 4523 of 2002 has approached this Court.

The case of the appellant is that his father made an application for grant of land under the Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as 'the Act'). The respondent also made a similar application for the grant of the same land. By an order dated July 12, 1990, the

Tehsildar rejected the application of the father of the appellant and allowed the claim of the respondent. The father of the appellant, therefore, preferred on appeal being Misc. Appeal No. 51 of 1990 in the Court of District Judge, Shimoga. The appeal was pending. During the pendency of the appeal, the father of the appellant expired on June 13, 1994. The appellant was not aware about the pendency of Misc. Appeal No. 51 of 1990 in the Court of District Judge, Shimoga. In September, 1994, the appellant received a letter from the advocate engaged by his father appearing in appeal that the appeal had come up for hearing. Immediately, therefore, the appellant contacted the advocate and informed him about the death of his (appellant's) father. An application was made on December 20, 1994 under Order 22, Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') by the appellant and his brothers for bringing them on record as legal representatives of deceased Hanumanthappa. In the affidavit to the said application, it was stated by the appellant that he came to know about the pendency of the appeal through the counsel only when the appellant received a letter from him. It was also stated that if the application would not be allowed, great hardship, inconvenience and loss would be caused to the appellant.

The learned District Judge, however, rejected the application on April 8, 1996 holding that the application filed by the appellant was time barred and no prayer for setting aside abatement had been made nor an application for condonation of delay was filed and hence the application was liable to be rejected.

The appellants, hence, again made applications in 1996 for setting aside abatement, condonation of delay and bringing heirs or deceased Hanumanthappa on record but the Court rejected the prayers by an order dated August 24, 2002.

Being aggrieved by the said order, the appellant preferred Civil Revision Petition before the High Court and by a cryptic order, the High Court rejected the petition observing that no grounds were made out by the petitioner to admit the revision. The said order is challenged in the present appeal.

We have heard the learned counsel for the parties. The learned counsel for the appellant submitted that too technical view has been taken by the District Court in rejecting the applications for bringing the appellant and his brothers on record, setting aside the abatement and refusing to condone delay. It was submitted that the appellant was not aware about the pendency of appeal instituted by his father in the District Court. It was only when the advocate engaged by his father addressed a letter that the appellant came to know about the pendency of appeal. Immediately, therefore, the appellant contacted the advocate and filed an application by invoking the provisions of Order 22, Rule 3 as also Section 151 of the Code. By considering the facts and circumstances, particularly, unawareness on the part of the appellant about the pendency of appeal, the District Court ought to have granted the prayer by substituting the appellant and his brothers as heirs and legal representatives of the deceased on record and disposed of the appeal on merits. In not doing so, an error of law as well as of jurisdiction has been committed by the Court. It was also submitted that even separate applications were filed but they were rejected. It was urged that the High Court ought to have interfered with the order of the District Court in exercise of revisional jurisdiction under Section 115 of the Code. Both the orders, therefore, deserve to be set aside by directing the District Court to grant the prayer for bringing the appellant and his brothers on record as heirs and legal

representatives of deceased Hanumanthappa, father of the appellant and to decide the appeal on its own merits.

The learned advocate appearing for the respondent, on the other hand, supported the order passed by the District Court and confirmed by the High Court. It was submitted that the first application filed by the appellant is already on record. In the said application, no prayer was made for setting aside the abatement and for condonation of delay. The District Court, therefore, was right in rejecting the said application. Since the application was dismissed, separate applications were not tenable and they were correctly rejected by the District Court and the said order was rightly confirmed by the High Court.

On August 14, 2003, this Court had issued notice stating therein that the notice would indicate "as to why the order of the High Court should not be set aside and by condoning the lapse, the matter be remitted to the Additional District Judge, Shimoga for restoring the proceedings on its original file for disposal of the matter afresh on merits in accordance with law."

Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed. The case of the appellant before the District was that he was not aware of the pendency of the appeal filed by his father against the order passed by the Tehsildar. The father of the appellant died in June, 1994 and the appellant came to know about the pendency of appeal somewhere in September, 1994 when he received a communication from the advocate engaged by his father. Immediately, therefore, he contacted the said advocate, informed him regarding the death of his father and made an application. In such circumstances, in our opinion, the learned counsel for the appellant is right in submitting that a hyper-technical view ought not to have been taken by the District Court in rejecting the application inter alia observing that no prayer for setting aside abatement of appeal was made and there was also no prayer for condonation of delay. In any case, when separate applications were made, they ought to have been allowed. In our opinion, such technical objections should not come in doing full and complete justice between the parties. In our considered opinion, the High Court ought to have set aside the order passed by the District Court and it ought to have granted the prayer of the appellant for bringing them on record as heirs and legal representatives of deceased Hanumanthappa and by directing the District Court to dispose of the appeal on its own merits. By not doing so, even the High Court has also not acted according to law.

Very recently, almost an identical case came up for consideration before us. In Ganeshprasad Badrinarayan Lahoti (D) by Lrs. v. Sanjeevprasad Jamnaprasad Chaurasiya & Anr., Civil Appeal No. 5255 of 2004, decided on August 16, 2004, the appellants heirs and legal representatives of deceased Ganeshprasad were not aware of an appeal filed by the deceased in the District Court, Jalgoan against the decree passed by the Trial Court. When the appeal came up for hearing, the advocate engaged by the deceased wrote a letter to Ganeshprasad which was received by the appellants and immediately, they made an application for bringing them on record as heirs and legal representatives of the deceased. The application was rejected on the ground that there was no prayer for setting aside abatement of appeal nor for condonation of delay. The appellants, therefore, filed separate applications which were also rejected and the order was confirmed by the High Court. We had held that the applications ought to have been allowed by the courts below. We, therefore,

allowed the appeal, set aside the orders of the District Court as well as of the High Court and allowed the applications. In our opinion, the present case is directly covered by the ratio in the said decision and the orders impugned in the present appeal also deserve to be set aside.

For the reasons aforesaid, the appeal deserves to be allowed and is accordingly allowed. The order passed by the District Judge, Davangere on August 24, 2002 and confirmed by the High Court on February 4, 2003, are set aside and the appellant and his brothers are ordered to be brought on record as heirs and legal representatives of deceased Hanumanthappa. The appellate court is directed to dispose of the Misc. Appeal No. 51 of 1990 in accordance with law after affording opportunity of hearing to both the parties. We may observe that we have not entered into merits of the matter and as and when the appeal will come up for hearing, the appellate court will decide the same strictly on its own merits. In the facts and circumstances of the case, there shall be no order as to costs.