Union Of India vs Sree Ram Bohra And Others on 29 January, 1965

Equivalent citations: 1965 AIR 1531, 1965 SCR (2) 830, AIR 1965 SUPREME COURT 1531, 1965 (1) SCWR 811, 1965 SCD 78, 1966 SCD 78, 1966 BLJR 589, 1966 (1) SCJ 494, 1965 2 SCR 830, ILR 44 PAT 977

Author: Raghubar Dayal

Bench: Raghubar Dayal, R.S. Bachawat, V. Ramaswami

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
SREE RAM BOHRA AND OTHERS

DATE OF JUDGMENT:
29/01/1965

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
BACHAWAT, R.S.
RAMASWAMI, V.

CITATION:
1965 AIR 1531 1965 SCR (2) 830

ACT:
Hindu Law-Suit by two persons representing joint Hindu family--Death of one-Appeal against the other-If competent-Code of Civil Procedure (Act 5 of 1908), 0.22. r. 11.

HEADNOTE:
The respondent and B filed a suit and obtained a decree for a certain sum against the appellant. The appellant appealed to the High Court and subsequently B died. The High Court dismissed an application setting aside the abatement of the appeal against B and for substitution as it was of opinion that there had been gross negligence on the part of the appellant. when the appeal came up for hearing a preliminary objection was raised by the respondent that the appeal had

abated entirely which was upheld by the High Court. On appeal by certificate, the appellants contended that there could be no abatement of the appeal as the had been brought by the respondent and B as the Kartas of the joint family and on the death of one of the Karta, the other Karta continued to represent the joint family, the real plaintiff-respondent.
HELD: The appeal against the respondent was incompetent. When two representatives of a joint Hindu family sued and obtained a decree in their favour for the benefit of the joint Hindu family, and an appeal was filed against both of them as respondents representing the joint Hindu family, the other representative would not continue to represent the joint family on the death of one of the representatives. [835 B-D]
Any one of them could not represent the joint family after the death of the other till his authority to represent the family was confirmed by the members of the family. [835 F-G]
The State of Punjab v. Nathu Ram, [1962] 2 S.C.R. 636, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 611 of 1962. Appeal by special leave from the judgment and decree dated February 11, 1959. of the Patna High Court in Appeal from Original Decree No. 525 of 1951.

Bishan Narain. D. R. Prem. B. R. G. K. Achar and R. N. Sachthey, for the appellant.

A. V. Viswanatha Sastri and K. K. Sinha, for respondents Nos. 1 to 5.

The Judgment of the Court was delivered by Raghubar Dayal J. Bilas Rai Bohra, son of Bansidhar Bohra and Sree Ram Bohra, son of Ganpat Ram Bohra, sued the Union of India for the recovery of Rs. 13,448 from the defendant for compensation on account of loss and damage suffered by the plaintiffs owing to non-delivery of II bales of cloth which had been consigned on October 20, 194 8 by M/s Ram Kishan Das Sagarmal of Bombay to the plaintiffs under the description of M/s Banshidhar Ganpat Rai. It was alleged in para 1 of the plaint that the plaintiffs carried on business in cloth and other articles in the name and style of M/s Bansidhar Ganpat Rai which was their joint family trading firm governed by the Mitakshara School of Hindu Law of which joint family the plaintiffs were the kartas and representatives and that they sued as such. This statement in para 1 of the plaint was not admitted in the written statement. The trial Court decreed the suit on August 29, 1951. The decree, inter alia, said :

> "It is ordered that the suit be decreed with costs defendants do pay to the plaintiffs the sum of Rs. 13,448 with interest thereon."

The Union of India appealed to the High Court of Patna and prayed for the setting aside of the decree and for the dismissal of the suit with costs. The plaintiffs- respondents were served with notice of the appeal. Subsequently Bilas Rai Bohra died on July 24, 1957. On September 5, 1958, the Union of India presented an application for substitution under 0. 22, r. 4 read with 0. 22, r. 1 1, C.P.C. for setting aside the abatement and condonation of delay. It was stated in the application that the applicant's advocate came to know of the death of Bilas Rai Bohra, plaintiff No. 1, on May 14, 1958 when the case was on the daily list with a note to that effect, that he promptly communicated the fact to the railway authorities but due to the mistake of the Attacher, proper steps for substitution could not be taken in time. It was further stated that after a good deal of enquiry and efforts for three days the date of the death of Bilas Rai Bohra and the names and addresses of his heirs and legal representatives could be ascertained. A prayer was made for substituting the heirs of Bilas Rai Bohra, they being his sons, a widow and a daughter. Their names were mentioned in the application.

This application was opposed on behalf of the heirs of Bilas Rai Bohra. It was mentioned therein that on September 27, 1957, an application for substitution of the heirs of Bilas Rai Bohra was made in another appeal in which the Union of India was a respondent and that therefore the Union of India and its Advocate were aware of the death of Bilas Rai Bohra and of the names of his heirs.

On December 1, 1958, the High Court dismissed the applica- tion for the setting aside of the abatement of the appeal against Bilas Rai Bohra and for the substitution of the heirs as it was of opinion that there had been gross negligence on the part of the appellant, the Union of India, as its counsel had information about the death of Bilas Rai Bohra at least on May 16, 1958. The High Court did not feel satisfied on the facts of the case that any ground had been made out for setting aside the abatement of the appeal. It may be mentioned here that it was not urged in the High Court that there had been no abatement of the appeal against the heirs and legal representatives of Bilas Rai Bohra. It could not have been urged when the Union of India itself had applied for the setting aside of the abatement and the substitution of the heirs and legal representatives of Bilas Rai Bohra.

The appeal of the Union of India against the surviving respondent, viz., Sree Ram Bohra, came up for hearing on February II, 1959, when a preliminary objection was raised on behalf of the respondent to the effect that the appeal had abated entirely as it had abated against the heirs of plaintiff-respondent No. 1. It was contended for the Union of India that the two plaintiffs, viz., Bilas Rai Bohra, deceased, and Sree Ram Bohra, had filed the suit as kartas of the joint family which was the owner of the firm of M/s Bansidhar Ganpat Rai and that after the death of one of the kartas the other plaintiff who was also described in the plaintiff's suit as karta was competent to represent the family and so there could be no question of abatement of the entire appeal. Again, it was not contended that the appeal against the heirs of Bilas Rai Bohra had not abated. The High Court upheld the preliminary objection and held that the appeal had become incompetent and was liable to be dismissed. It was of opinion that even if it be taken that both th plaintiffs had filed the suit in their capacity as kartas of the same joint family, the joint family had gained by virtue of the appeal having abated against the heirs of Bilas Rai Bohra as the decree passed in favour of the joint family through the representation of Bilas Rai Bohra could not be set aside and in case the appeal was permitted to proceed against the joint family in the presence of the other karta Sree Ram Bohra,

there might be occasion for the coming into existence of two inconsistent decrees. The High Court, accordingly, dismissed the appeal. It was against 83 3 this order that the Union of India obtained the certificate from the High Court under Art. 133 and then filed this appeal.

The sole point for decision in the appeal then is whether the appeal of the Union of India before the High Court against the respondent Sree Ram Bohra, respondent No. 2, was competent after it had abated against respondent No. 1, Bilas Rai Bohra, on account of his heirs and legal representatives being not brought on the record. It has not been disputed for the appellant that in case it is held that the appeal had abated against the heirs and legal representatives of Bilas Rai Bohra, it became incompetent against the surviving respondent alone. The suit was filed by both the plaintiffs. Both were respondents in the appeal. The decree was a joint one, without any specification regarding the shares of each of the decree- holders. The appeal must, therefore, become incompetent if it has abated against one of the respondents. What is really urged for the appellant is that there could be no abatement of the appeal on the death of Sree Ram Bohra and the omission to bring on record his heirs and representatives, as the real plaintiff was the joint family which owned the firm Bansidhar Ganpat Rai, the consignee of the bales which were not delivered and as the suit had been brought by the two named plaintiffs as the kartas of the joint family. It is said that on the death of one of the kartas, the other karta continued to represent the joint family, the real plaintiff-respondent, and that therefore there could not be any abatement of the appeal. We do not consider the contention sound.

We have not been referred to any text of Hindu Law or any decided case in support of the proposition that a joint Hindu family can have more than one karta. The very idea of there being two kartas of a joint Hindu family does not appear, prima facie, consistent with the concept of a karta. Their describing themselves as kartas of the joint Hindu family owning the firm and their suing as such cannot make them kartas of the joint Hindu family if the Hindu Law does not contemplate the existence of two kartas.

In paragraph 236 of Mulla's Hindu Law, XII Edition, is said "Property belonging to a joint family is ordinarily managed by the father or other senior member for the time being of the family. The manager of a joint family is called karta.

The father is in all cases naturally, and in the case of minor sons necessarily, the manager of the joint family property-"

> The existence of two kartas cannot lead to the smooth management of the property of the joint Hindu family and the other affairs of the family in view of the powers which the karta of a joint Hindu family possesses under the Hindu Law, powers which are not restricted to only such powers which ordinarily the manager of property of certain persons who confer authority on him to manage the property possesses. The karta of the joint Hindu family is certainly the manager of the family property but undoubtedly possesses powers which the ordinary manager does not possess. The karta cannot therefore be just equated with the manager of property.

Reference was made to the case reported as Bhagwan Dayal v. Mst. Reoti Devi(1). It was stated at p. 482 :

"The legal position may be stated thus : Coparcenary is a creature of Hindu law and cannot be created by agreement of parties except in the case of reunion. It is a corporate body or a family unit. The law also recognizes a branch of the family as a subordinate corporate body. The said family unit, whether the larger one or the subordinate one, can acquire, hold and dispose of family property subject to the limitations laid down by law. Ordinarily the manager, or by consent, express or implied, of the members of the family, any other member or members can carry on business or acquire property. subject to the limitations laid down by the said law, for or on behalf of the family."

The fact that any other member or members other than the manager of the joint Hindu family, carry on business etc., on behalf of the family, does not mean that such members who act for the family do so as kartas of the family. In the absence of any text of Hindu law or of any previous decision that a joint Hindu family can have two kartas we are not prepared to express any definite opinion on the question whether there can be two kartas of a joint Hindu family and, if there can be two kartas, what would be the effect of the death of one of them on the maintainability of a suit brought by both of them.

(1) [1962] 3 S.C.R. 440.

Two persons may look after the affairs of a joint Hindu family on the basis of the members of the joint Hindu family clothing them with authority to represent the family. They would be two persons entitled to represent the family and their power to represent would depend on the terms of the authority conferred on them by the members of the joint Hindu family. Their authority to act for the family is not derived under any principle of Hindu law, but is based on the members of the joint Hindu family conferring certain authority on them. It cannot, therefore, be said that when two such representatives of a joint Hindu family sue and obtain a decree in their favour for the benefit of the joint Hindu family, and an appeal is filed against both of them as respondents representing the joint Hindu family, the other representative would continue to represent the joint family on the death of one of the representatives. He could not possibly do so when the authority given by the joint Hindu family be to the effect that both of them were to act jointly. In the absence of any knowledge about the terms of authority of the two representatives, it is not possible to urge successfully that on the death of one of the representatives, the other representative still continued to represent the joint Hindu family. On the death of one of the representatives, the karta of the family, in accordance with the principles of Hindu law, will automatically be the person entitled to represent the joint Hindu family till such time that the family again decides to confer the authority on specified members of the joint Hindu family to represent it. There is no material on the record to indicate the terms and scope of the authority conferred on the two plaintiffs by the joint Hindu family. We, therefore, consider the matter in appeal on the basis that the suit was brought by two persons as plaintiffs. They can at best be taken to represent the joint Hindu family which owned that firm Bansidhar Ganpat Rai. Any one of them cannot represent the joint family after the death of the other till his

authority to represent the family is confirmed by the members of the family. There is no allegation or proof about such confirmation or fresh vesting of authority in the second plaintiff, viz., Sree Ram Bohra. For the purpose of the suit, there were two plaintiffs and on the death of one of them it was necessary for the opposite party to implead his heirs and legal representatives within time. It failed to do so and therefore the appeal against those heirs and representatives of Bilas Rai Bohra was rightly held to have abated. The result of such abatement makes this appeal against the other respondent incompetent as the decree against both the respon-

dents viz., Bilas Rai Bohra and Sree Ram Bohra was a joint decree. There was nothing in the decree to indicate for whose benefit it was passed or in what proportions the two decree-holders were to get the decretal amount. The appeal against Sree Ram Bohra was therefore incompetent. This view is supported by the decision of this Court in The State of Punjab v. Nathu Ram(1). It was held there that when the decree in favour of the respondents is joint and indivisible, the appeal against the respondents other than the deceased respondent cannot be proceeded with if the appeal against the deceased respondent has abated. We are, therefore, of opinion that the High Court was right in holding that the appeal against Sree Ram Bohra alone became incompetent.

It has been further argued for the appellant that the High Court should have allowed the appellant's application for setting aside the abatement. The High Court exercised its discretion judiciously, after taking into consideration the facts urged in support of the prayer that the abatement of the appeal be set aside. We do not find any reason to consider that the discretion was not properly exercised. We, therefore, do not consider this a fit case to interfere with the discretion exercised by the High Court in this regard.

We, therefore, dismiss the appeal with costs. Appeal dismissed.

(1) [1962] 2 S.C. R. 636.