

Union Of India vs Daulat Ram, Etc. on 2 November, 1966

JUDGMENT

Dua, J.

(1) In this appeal, Daulat Ram, respondent No. 1, plaintiff in the suit, is stated to have died on 7th January, 1963 and his legal representatives have not been impleaded so far.

(2) It is conceded on behalf of the appellant that the appeal as against the deceased must be held to have abated. An attempt, has however, been made to persuade us to hold that as regards the other respondents, the appeal is alive and can be disposed of on merits. Mr. D. K. Kapur has very strongly argued that even though the finding of the Court below that the plaintiff was a mortgagee from Harnam Das defendant No. 2 would be binding on all the parties, nevertheless if he is permitted to show that the mortgagor of the plaintiff is Jagir Chand, defendant No. 3 and not defendant No. 2, that decree would not in any way conflict with the impugned decree and both the decrees can co-exist and remain operative. In support of his contention, he has relied on a recent decision of the Supreme Court in the State of Punjab v. Nathu Ram but the ratio of that decision does not seem to us to help him. On the contrary, the rule of law approved by it goes against the appellant. The Code of Civil Procedure does not provide for abatement of appeals against corespondents of the deceased. But if the decree against the surviving respondents, in the event of the success of the appeal, would be contradictory of the decree which has become final as a result of abatement, then the appeal cannot proceed even against the existing respondents. This rule is founded on consideration of consistency in judicial decisions. It is obvious that if we hold that the mortgagor of the plaintiff is defendant No. 3 and not defendant No. 2, it would clearly be in direct conflict with the existing decree affecting the right of the deceased and this, under the law, cannot be permitted. We are, therefore, of the opinion that the appeal abates in toto and it must be dismissed. We order accordingly. There would be no order as to costs.

K.S. Hegde, C.J.

(3) I agree.