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MARINGMEI ACHAM

v.

M MARINGMET KHURIPOU

(Civil Appeal No. 8104 of 2022)

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NOVEMBER 03, 2022

[K. M. JOSEPH AND HRISHIKESH ROY, JJ.]

C *Code of Civil Procedure, 1908 – Abatement of suit – Proper or not – High Court held that the civil miscellaneous appeal filed u/Or.XLIII, r.1 of CPC against an order refusing temporary injunction would no longer have to be proceeded with, as the suit was filed by the appellant’s late father and no steps were taken to implead his legal representatives – As a result, the suit filed by the appellant’s father had abated – Since, the suit from which the appeal arose abated, nothing further survived – Held: A circumstance to be*
D *noticed is that appellant’s father died during the pendency of appeal against the refusal to grant interim order – The appellant had filed application before the Appellate Court seeking to come on record as his legal representative – Application was allowed – In view of the fact, that the legal representative was brought on record in an*
E *appeal from an interlocutory order, such impleadment will enure towards the proceedings itself – The failure to get the appellant impleaded in the suit itself would not be fatal to the continued prosecution of the suit – The suit, therefore, must be proceeded with – Order of the High Court set aside.*

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Rangubai Kom Shankar Jagtap v. Sunderabai Bhratar Sakharam Jedhe & Others [AIR 1965 SC 1794] : [1965] SCR 211 – relied on.

Case Law Reference

[1965] SCR 211

relied on

Para 9

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8104 of 2022.

From the Judgment and Order dated 11.03.2021 of the High Court of Manipur at Imphal in CRP (CRP Art. 227) No. 29 of 2019.

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Amit Pawan, Anand Nandan, Hassan Zubair Waris, Ms. Shivangi, Suchit Singh Rawat, Aakarsh, Bharat Singh, Ashish Pandey, Kshitiz Singh, Kushagra Raghuvanshi, Mahipal Khagnwal, Advs. for the Appellant. A

N. Umakanta Singh, N G Junior, Neeraj Kumar Gupta, Advs. for the Respondent.

The Judgment of the Court was delivered by B

K. M. JOSEPH, J.

Leave granted.

1. The impugned order is an order passed in a Civil Revision Petition. The High Court has found that in view of the fact that the suit, filed by the appellant's late father (Maringmei Thaitoungam) who had died and as no steps had been taken to implead his legal representatives, had abated, the result of the abatement of the suit filed by the appellant's father, it was held, was that the civil miscellaneous appeal filed under Order XLIII Rule 1 of the Code of the Civil Procedure against an order refusing temporary injunction would no longer have to be proceeded with. C D

FACTS

2. It is the case of the appellant that his father (Maringmei Thaitoungam) became the headman of a village by name Lamdan Kabui in the year 1972. It is his further case that the post of Chief (Khullakpa) of the village Lamdan Kabui is hereditary as per the Rongmei Kabui Customary Law and as per which on the death of the chief of the village, the eldest clan member /son becomes the chief. The custom has been in existence since time immemorial and even notified in the Gazette. It is in terms of such custom that the appellant's father became the chief in the year 1972. E F

3. The appellant's father filed Original (Declaratory) Suit No.3 of 2014 on 10.03.2014 contending that he was the chief of village since 1972. His wife had passed away in the year 2013. The respondent herein claiming that a widower cannot become the chief, had forged certain proceedings declaring himself to be the chief. It was his further contention that even if the original plaintiff could not act as a chief, his son can become the chief. The appellant's father sought a relief of declaration of his right as chief (Khullakpa). He further sought a declaration that the order passed by the Deputy Commissioner, Churachndpur dated G H

- A 20.01.2014 by which the respondent was recognised as chief was null and void and a permanent injunction was also sought for against the felling of trees.

4. The original plaintiff filed an application seeking injunction under Order XXXIX Rule 1 again seeking to restrain the respondent from acting as chief, felling of trees and collecting of house tax. The respondent filed his written objections. Suffice it to notice that the application seeking interim injunction was declined by the trial Court which resulted in Civil Miscellaneous Application No. 2 of 2014 being filed before the District Judge by the original plaintiff. Records came to be called for. The next circumstance to be noticed is crucial as it consists of the death of the original plaintiff-the appellant's father (Maringmei Thaitoungam) which took place on 07.09.2014. This event took place during the pendency of the appeal against the refusal to grant interim order. In September, 2014, the appellant filed application before the appellate Court seeking to come on record as his legal representative. This application came to be allowed by order dated 18.09.2014.

5. On 23.12.2014, the respondent filed a suit (Original (Injunction) Suit No. 39 of 2014) seeking to restrain the appellant from acting as village chief. The respondent also filed an application seeking temporary injunction. The said application came to be allowed. Civil Miscellaneous Appeal No. 2 of 2015 was filed again by the appellant challenging the order granting injunction against the appellant. The High Court by order dated 12.01.2016 directed verification as to whether after the death of the original plaintiff (the appellant's father), any substitution had taken place in the suit.

6. On the application filed by the appellant seeking amalgamation of the two civil miscellaneous appeals, by order dated 27.11.2018, amalgamation as prayed for was allowed. A challenge to the same by the respondent resulted in order dated 15.04.2019 affirming the amalgamation. However, it was observed by the High Court that it was open to the respondent to contest the maintainability of the appeals. It is this order which led to the passing of order dated 13.05.2019. By the said order, the District Judge found apparently that the appeals are maintainable. This led to the filing of the revision petition and culminated in the impugned order dated 11.03.2021.

- We have heard learned counsel for the appellant and the learned counsel for the respondent.

7. The findings of the High Court at paragraph No. 11 are as follows: A

“[11] It is however significant to note that the suit prayer of Maringmei Thaitoungam was not only to declare him as the existing or continuing Chief of Lamdan Kabui Village but also to declare the order dated 20.01.2014 passed by the Deputy Commissioner, Churachandpur, to be null and void. By the said order, the Deputy Commissioner had approved and validated the claim of Maringmei Khuripou that he was the new Khullakpa/Chief of Lamdan Kabui village. In effect, the claim of Maringmei Thaitoungam to the said post stood rejected by this order. Unless the said order is set aside, the question of Maringmei Acham seeking any hereditary rights under his deceased father in relation to the Chiefship of the village would not arise. To that extent, Maringmei Acham had an interest in and the right to continue the suit proceedings as the cause of action in relation to the Deputy Commissioner’s order dated 20.01.2014 still remained alive for him even after the death of Maringmei Thaitoungam. Therefore, the plea of Maringmei Khuripou that the cause of action in the suit stood extinguished in its entirety upon the death of Maringmei Thaitoungam, the sole plaintiff, cannot be accepted.” B C D

After so finding, the High Court has proceeded to notice that the Original (Declaratory) Suit No. 3 of 2014 filed by the appellant’s father had abated long back in December, 2014, on account of the death of the sole plaintiff. Since no application was filed within time under Order XXII of the CPC, the suit stood abated. It was on this basis essentially that the Court went on to find that the appellate Court erred in not taking note of this vital aspect while considering the maintainability of the Civil Miscellaneous Appeal No. 2 of 2014 and limiting itself only to the merits of the matter. E F

8. The High Court observed that procedure while is only handmaid of justice but it could not be ignored to the extent of dealing with an appeal on merits when the basis of the order under appeal stood demolished. Essentially this meant that the High Court found that since the suit from which the appeal arose itself stood abated, nothing further survived. G

9. Learned counsel for the appellant would contend that the approach of the High Court is fallacious. He would point out that paragrah H

- A 11 (supra) reflected the correct approach of the High Court finding that the appellant has a right to continue to prosecute the suit which was filed by his father. But thereafter, the premise of the impugned order is that the suit having been abated as a result of the death of appellant's father—the only plaintiff, and it was not unsettled by bringing on record of the legal representatives within time, nothing more survives for being considered in an appeal from the grant or refusal of injunction.

B He would submit that this is a matter which is to be decided in favour of the appellant having regard to the position at law which has been clearly laid down by the judgment of this Court in *Rangubai Kom Shankar Jagtap v. Sunderabai Bhratar Sakharam Jedhe & Others* [AIR 1965 SC 1794]. Therein this Court *inter alia* laid down as follows:

- C “9. Let us now consider the question on principle. A combined reading of Order XXII, Rules 3, 4 and 11, of the Code of Civil Procedure shows that the doctrine of abatement applies equally to a suit as well as to an appeal. In the application of the said Rules 3 and 4 to an appeal, instead of “plaintiff” and “defendant”, D “appellant” and “respondent” have to be read in those rules. Prima facie, therefore, if a respondent dies and his legal representatives are not brought on record within the prescribed time, the appeal abates as against the respondent under Rule 4, read with Rule 11, E of Order XXII of the Code of Civil Procedure. But there is another principle recognized by the Judicial Committee in the aforesaid decision which softens the rigour of this rule. The said principle is that if the legal representatives are brought on record within the prescribed time at one stage of the suit, it will enure for the benefit of all the subsequent stages of the suit. The application of this F principle to different situations will help to answer the problem presented in the present case. (1) A filed a suit against B for the recovery of possession and mesne profits. After the issues were framed, B died. At the stage of an interlocutory application for production of documents, the legal representatives of B were brought on record within the time prescribed. The order bringing G them on record would enure for the benefit of the entire suit. (2) The suit was decreed and an appeal was filed in the High Court and was pending therein. The defendant died and his legal representatives were brought on record. The suit was subsequently remanded to the trial court. The order bringing the legal H

representatives on record in the appeal would enure for the further stages of the suit. (3) An appeal was filed against an interlocutory order made in a suit. Pending the appeal the defendant died and his legal representatives were brought on record. The appeal was dismissed. The appeal being a continuation or a stage of the suit, the order bringing the legal representatives on record would enure for the subsequent stages of the suit. This would be so whether in the appeal the trial court's order was confirmed, modified or reversed. In the above 3 illustrations one fact is common, namely, the order bringing on record the legal representatives was made at one stage of the suit, be it in the suit or in an appeal against the interlocutory order or final order made in the suit, for an appeal is only a continuation of the suit. Whether the appellate order confirms that of the first Court, modifies or reverses it, it replaces or substitutes the order appealed against. It takes its place in the suit and becomes a part of it. It is as it were the suit was brought to the appellate court at one stage and the orders made therein were made in the suit itself. Therefore, that order enures for the subsequent stages of the suit."

10. The learned Counsel for the respondent, on the other hand, would submit that the position at law canvassed by the appellant is unexceptionable and the High Court may have been in error in ignoring the effect of the order by which the District Court had in the civil miscellaneous appeal brought on record the appellant as legal representative of the original plaintiff-appellant's father. However, he would point out that his complaint in the petition under Article 227 has not been considered by the High Court. He would point out that his contention was that on the death of the original plaintiff, the relief which was purely personal to him could not have been allowed to be pursued by the appellant-son of the original plaintiff in the appeal.

He would therefore, pray that the matter should go back to the High Court for consideration of his contention which according to him has not been done by the High Court.

11. In the suit as we have noticed, Suit No. 3 of 2014, which was the suit filed by the father of the appellant, the High Court has entered the finding as we have noticed in paragraph 11 of the impugned order.

Learned counsel for the respondent, as we have noticed, does not take objection to the said reasoning of the High Court. This means that

A the suit can be continued by the appellant despite the passing away of the only sole plaintiff. As far as the effect of the death of the original plaintiff during the pendency of the miscellaneous appeal, is concerned, we have noticed the pronouncement of this Court. This case attracts illustration number three which has been referred to in paragraph 9 of the judgment. For the sake of clarity, we recapitulate the same:

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C (3) An appeal was filed against an interlocutory order made in a suit. Pending the appeal the defendant died and his legal representatives were brought on record. The appeal was dismissed. The appeal being a continuation or a stage of the suit, the order bringing the legal representatives on record would enure for the subsequent stages of the suit. This would be so whether in the appeal the trial court’s order was confirmed, modified or reversed.

D In the above 3 illustrations one fact is common, namely, the order bringing on record the legal representatives was made at one stage of the suit, be it in the suit or in an appeal against the interlocutory order or final order made in the suit, for an appeal is only a continuation of the suit. Whether the appellate order confirms that of the first Court, modifies or reverses it, it replaces or

E substitutes the order appealed against. It takes its place in the suit and becomes a part of it. It is as it were the suit was brought to the appellate court at one stage and the orders made therein were made in the suit itself. Therefore, that order enures for the subsequent stages of the suit.”

F 12. In this case itself, similarly in the suit, temporary injunction sought by the original plaintiff was refused. An appeal was filed against the refusal to grant interlocutory order. The original plaintiff-appellant’s father having passed away during the pendency of the appeal, the legal representative that is the son of the original plaintiff viz., the appellant,

G was brought on record by the order of the Court dated 18.09.2014 in the appeal. The fact that in the suit, the legal representative was not substituted would not result in the consequence which the High Court has found in the impugned order having regard to the declaration of the law made by this Court. In other words, in view of the fact that the legal representative has been brought on record in appeal though from an

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interlocutory order, such impleadment will enure towards the proceedings in the suit itself. To make it further clear, the failure to get the appellant impleaded in the suit itself would not be fatal to the continued prosecution of the suit. The suit, therefore, must be proceeded with and it cannot be extinguished by virtue of the abatement which the High Court attributes on account of the death of the sole plaintiff and non impleadment in the suit of his legal representative.

13. Having so found, the question arises as to whether it should go back to the District Judge for consideration of the appeal or whether it should be remitted to the High Court for considering the complaint of the respondent that the appeal before the District Judge was not maintainable having regard to the death of the original plaintiff in Original (Declaratory) Suit No. 3 of 2014.

In this regard, we find that in the interest of justice, since the suits are still pending and the issue must be decided in the said suits, it would be more appropriate if we direct that the suits filed by both the appellant's father and the respondent are taken up and decided within a reasonable time. In this regard and to facilitate the same, we record the submission of the appellant that the appellant will not press Civil Miscellaneous appeals.

We record the submission and we allow the appeal and set aside the order of the High Court and having regard to the commonality of the issues which appear to arise and the commonality of the parties to the suits, we further direct that Original (Declaratory) Suit No. 3 of 2014 and Original (Injunction) Suit No. 39 of 2014 shall be consolidated and the cases be disposed of as early as possible and within a period of eight months from the date of production of a copy of this judgment before the Civil Judge (Senior Division), Churachandpur.

We make it clear that we have not made any pronouncement on the merits of the contentions of the parties which we leave open.

The parties will bear their respective costs.