

Sheoram And Anr. vs Prem Shankar And Ors. on 8 December, 1953

Equivalent citations: AIR1954ALL436, AIR 1954 ALLAHABAD 436

JUDGMENT

Ranbhir Singh, J.

1. This is a second rent appeal by an unsuccessful defendant arising out of a suit under Section 180 'U. P. Tenancy Act'. It appears that four persons Prem Shankar, Girja Shankar, Durga Shan-kar and Gyan Shankar instituted a suit against Darshan,. who was originally the appellant in this case but has since died, for possession of certain plots of land on the allegations that these plots belonged to the plaintiffs who owned specific shares in the plots but had been taken unlawful possession of by the defendant.

2. The defendant contested the suit on various grounds and claimed proprietary interest in the plots. An issue on proprietary title was then framed by the Revenue Court and was referred to the Civil court for decision. The decision of the Civil Court was in favour of the plaintiffs. On receipt of the finding of the Civil Court, the Revenue Court decreed the suit for possession of the plots in favour of all the four plaintiffs. Darshan then went in appeal to the District Judge but the appeal was dismissed and the decree passed by the trial court was upheld. He then came up in second appeal.

3. During the pendency of this appeal, Durga Shankar one of the four respondents died and an application was made by Darshan, appellant, on the 20th February, 1950, praying that Durga Shankar having died on the 16th October, 1949 and the appeal having abated, the abatement may be set aside as Darshan did not know of the death of Durga Shankar within time. This application of Darshan was heard by this Court and an order was passed on the 13th April, 1951, rejecting the application. It was further ordered that the result of the abatement against Durga Shankar would be considered at the time of the hearing of the appeal. The effect of abatement against Durga Shankar, respondent, has now to be considered.

4. it has been argued by learned counsel, on behalf of the appellant that the appeal does not abate as a whole in view of the fact that each of the four plaintiffs had specified his share in the plots in respect of which the suit for possession had been instituted. Reliance is also placed on a partition alleged to have been effected amongst the plaintiffs in the year 1937 by means of a registered document. It is urged on the basis of this partition deed that as the plaintiffs were allotted specific plots in the partition, the joint decree should be deemed to be a decree in respect of specific plots owned by each of the decree-holders.

We are unable to agree with this contention. A perusal of the plaint shows that although the plaintiffs had specified the extent of their shares in the plots in paragraph 1 of the plaint, they asked for a joint decree for possession in respect of all the plots. No objection was made by the defendant, Darshan, in his written statement to the effect that all the plaintiffs were not entitled to a joint decree for possession of all the plots and that a decree for separate possession of specific plots should be passed in favour of each of the plaintiffs. It is also significant that the plaintiffs did not claim specific plots in the plaint. They only mentioned that plaintiffs 1 and 2 owned a one-third share while plaintiffs 3 and 4 also owned a one-third share each. It would appear, therefore, that the plaintiffs claimed an undivided share the extent of which was specified in each of the plots which were in suit.

5. It is unnecessary to enter into the merits of the title of the plaintiffs to each of the plots in view of the fact that the plaintiffs had claimed a joint decree in respect of all the plots and were granted a joint decree. The decree for possession stood jointly in favour of all the four appellants and if the appeal has abated against one of them, the effect of it would be that the decree passed by the two Courts below in favour of the deceased respondent would stand intact and would not be affected by the result of this appeal. If the appeal against the remaining respondents is allowed, it would result in inconsistent decrees, one standing in respect of all the plots in favour of the heirs of the deceased respondent against whom the appeal has abated and another against the remaining respondents in favour of the appellant. The principle guiding the abatement of an appeal in part or as a whole is that the decision of the appeal should not result in two inconsistent decrees.

A similar case came up for consideration before a Division Bench of the Calcutta High Court in -- 'Arjan Mirdha v. Kali Kumar', AIR 1923 Cal 294 (1) (A), and it was held that even though the shares of the different plaintiffs may have been specified, the mere specification by the plaintiffs would not alter the nature of the decree and the appeal would abate as a whole if the appeal against a joint decree has abated against one of the joint decree-holders. We agree with the view taken in the above case. The appeal in this case has, therefore, abated as a whole and not only against Durga Shankar.

6. Learned counsel for the appellant has also urged that the suit should be ordered to abate in view of the provisions of Rule 5 of the Zemin-dari Abolition and Land Reforms Act. Rule 5 enjoins that all pending suits or appeals which have been stayed under Rule 4 shall be abated by the authority or the tribunal before which they are pending. In the present case the appeal has neither been stayed nor was pending on the date when Rule 5 came into force. The appeal abated as long ago as January 1950 and will not be deemed to be pending when Rule 4 or Rule 5 came into force. No order directing abatement of the suit which has given rise to this appeal can, therefore, be passed.

7. In view of the order declaring abatement of the appeal as a whole Civil Miscellaneous Applications .Nos. 499 of 1952 and 510 of 1953 do not arise and they are dismissed.