

Tula Ram vs Mangaloo And Ors. on 23 July, 1953

Equivalent citations: AIR1954ALL10, AIR 1954 ALLAHABAD 10

JUDGMENT

Brij Mohan Lall, J.

1. This is a first appeal from an order passed by the learned District Judge of Meerut. It appears that a civil appeal was pending before the learned District Judge. Rupa, one of the respondents in the said appeal, died during the pendency of the appeal. The appellant did not make an application to bring Rupa's legal representative on the record within the time allowed by law. After the expiry of the said period he made an application praying that Rupa's son, Yadu, might be brought on the record under Order 41, Rule 20 C. P. C. At the same time he contended before the learned District Judge that the appeal had not abated as a result of his failure to bring Rupa's legal representative on the record.

2. The learned District Judge remarked in his order under appeal that the counsel for the appellant should make up his mind as to whether he would make an application under Order 22, Rule 9, C. P. C., to bring the legal representative of Rupa on the record or he would contend that it was unnecessary to implead Rupa's legal representative. He also added that "the question of impleading Rupa's legal representatives under Order 41 Rule 20 C. P. C., does not arise".

3. Learned counsel for the appellant contends that the learned Judge has not yet disposed of his application containing a prayer to implead Rupa's legal representative under Order 41, Rule 20. I am unable to agree with this contention. It is true that the language used by the learned Judge is not explicit but after reading his order as a whole there is no doubt left in one's mind that he meant to reject the petition for impleading Rupa's legal representative under Order 41, Rule 20, C. P. C. I, therefore, take it that the learned Judge has rejected the petition presented before him.

4. I have next to see whether that decision is incorrect. In this connection it may be pointed out that the right of impleading any person as a party to the suit has been conferred by Rule 20 of Order 41 on the Judge alone. If the Judge feels that a certain party should be impleaded, he may take action under the rule. This rule does not give a right to a party to claim that a certain person should be impleaded. If the Judge does not consider it necessary to implead any person as a party, there is an end of the matter. Ordinarily this power should not be exercised at the instance, or in favour of a party who has deliberately or negligently failed to make an application for substitution of names under Order 22, Rule 4 read with Rule 11.

5. In the present case, an automatic abatement has taken place and the real object of the appellant was to circumvent the provisions of Order 22 Rule 4(3) read with Rule 11. The learned Judge was, therefore, perfectly right in not acceding to the appellant's request.

6. In the circumstances, I find no force in this appeal. It is dismissed under Order 41, Rule 11 C. P. C.