

Mt. Surji vs Manki Ram on 16 August, 1950

Equivalent citations: AIR1951ALL381, AIR 1951 ALLAHABAD 381

ORDER

Bind Bansi Prasad, J.

1. This is an application under Section 151, Civil P. C., praying that a decree passed by this Court in S. A. No. 1206 of 1946 on 4-1-1949, be set aside. The appeal was by the defendants and the dispute related to a chabutra and a house. It was heard ex parte. It was allowed. The decree of the lower appellate Court was set aside and that of the trial Court restored. On 28-3-1949, one Bishwanath who is the son of Manki Ram, the sole respondent in the appeal, made the application which is under consideration. He filed an affidavit in support of it and it appears from the same that Manki Ram, respondent, had died about 13 months before the judgment and the appellants had taken no steps to bring his legal representatives on the record. The position thus is that long before the date of the judgment by this Court the respondent was dead and none had been brought in his place on the record. Notice of this application was given to the appellants. No counter, affidavit was filed by them. Learned counsel for the appellants was given opportunity several times to get in contact with the appellants. He states that despite the fact that he sent registered letters to the appellants he got no reply. The facts given in Bishwanath's affidavit must, therefore, be taken as correct. Though Mr. S.K. Verma, counsel for the appellants, had no instructions he put the case before the Court on behalf of the appellants and contended that the decree passed by this Court on 4-1-1949, cannot be set aside by such an application. He states that he has looked up the case law and did not find any parallel case. It is not disputed that the decree which was passed by this Court on 4-1-1949, was a nullity. He argues, however, that Bishwanath should raise this point in the execution proceedings, and it is not open to him to seek the assistance of the Court for a declaration that the decree is a nullity. Section 161 provides:

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

2. When it is clear that the decree, dated 4-1-1949, passed by this Court is a nullity it must be declared as such as soon as possible so that Bishwanath the applicant may be saved from harassment. It is no use postponing the matter and asking him to have his remedy by another procedure. What is wrong is wrong and should be declared so as quickly as possible. I am of opinion that the inherent powers of the Court should be exercised in the present case. It would be an abuse of the process of the Court to allow a decree which is a nullity to stand.

3. The application is allowed. The decree, dated 4-1-1949, is set aside and it is hereby declared that S. A. No. 1206 of 1946 abated on account of the fact that Manki Ram, respondent, had died prior to

the date of the judgment and his heirs had not been brought on the record during the prescribed period.