

## **Bhajju Lal And Ors. vs Bechey Singh And Ors. on 14 April, 1950**

**Equivalent citations: AIR1950ALL665, AIR 1950 ALLAHABAD 665**

ORDER

Chandiramani, J.

1. It appears that one Lalta Singh was owner of a 5 biswas' share in zamindari property. He executed a usufructuary mortgage of it on 3rd October 1882, for Rs. 1750 in favour of one Gajodhar. On his death the shares in his property devolved as follows : Mt. Rukmin got one biswa, Mt. Chhoti got one biswa, Mt. Mulla got one biswa, Mt. Umrai got one biswa and Durga Singh got one biswa.

2. Bechey Singh and Khetal Singh bought Mt. Rukmin's share. Under Section 12, Agriculturists' Relief Act, they applied for redemption of this share of her property. This application was allowed on 24th November 1944, without payment of any mortgage money. The present applicants, who were the opposite parties in that application under Section 12, Agriculturists' Relief Act, went up in appeal. The appeal was dismissed. Then they filed the present application in revision. During the pendency of this application Khetal Singh, one of the two applicants under Section 12, died on or about 15th August 1948. On 12th September 1949 an application was made for substituting his heirs on the record. This Court held that there was no sufficient cause for the application for substitution having been made more than one year after the death of Khetal Singh. The application for substitution was rejected and it was said that the revision abated so far as Khetal Singh was concerned' and its effect on the whole revision would be considered at the time of hearing of the revision, application.

3. The learned counsel for the opposite parties has accordingly raised a preliminary objection that the revision has abated not only against Khetal Singh but as a whole. He has pointed out that there is a joint decree for redemption in favour both of Khetal Singh and Bechey Singh that should the revision application be allowed there would be two inconsistent decrees in the case. The learned counsel for the applicants states that there is a khewat on the record which shows that the interest of Khetal Singh and Bechey Singh was separable and separate and each possessed equal interest. That might be so but the decree itself is indivisible and does not specify the shares of Bechey Singh and Khetal Singh. In *Bam Jas v. Ram Lal*, 1935 O. W. N. 297 : (A. I. R. (23) 1936 Oudh 209), it has been held that ;

"The question, whether an appeal can or cannot proceed in the absence of the legal representatives of a deceased respondent, must depend upon the nature of each case, and it is impossible to lay down a general rule applicable to all such cases. Each case must depend upon its own circumstances, If in such a case the decree under appeal is a joint decree in favour of all the respondents the appeal abates! as a whole, for if the whole appeal is allowed not to abate, the decision may result in two conflicting decisions with regard to the same subject-matter."

Earlier decisions of the Allahabad High Court on the same point were followed. In Ghulam Abbas v. Safdar Jha Zahid Ali, 1941 O. W. N. 418 : (A I. R. (28) 1941 Oudh 219 F. B.), the decision referred to above was approved and accepted. The learned counsel for the applicants has been unable to show me any authority where it has been held to the contrary in such cases like the present where a joint decree has been obtained by the respondents and one of them dies during the pendency of the appeal or the revision as the case may be ended his heirs are not impleaded. In these circumstances this revision must abate as a whole.

4. The learned counsel for the applicants pointed out that no limitation is prescribed for making an application for substitution in revision applications, and that in these circumstances if necessary the heirs may be substituted even now. It is true that the provisions of Order 29, Civil P. C., do not in terms apply to revision applications. In Khuda Rux v. Mahanand Tewari, 1947 O. W. N. 221 : (A. I. R. (35) 1948 Oudh 84) it has been held by a Bench of the late Oudh Chief Court:

"Order 22, Civil P. C., has no application to an application for substitution of the names of the legal representatives of a deceased party. In a revision application and there is no rule of limitation governing an application for substitution of parties in civil revisions. But there is no duty cast upon the High Court once it admits a revision application to call for the record of the case and to consider it, irrespective of whether the applicant does or does not carry out his duties as an ordinary litigant with respect to the application. If, therefore, after the admission of the application for revision, a party dies and no application for substitution of the names of his legal representatives is presented within a reasonable time (which in the case of such an application is the time mentioned in Order 22, Civil P. C.), the application for revision abates in the sense that the proceedings shall cease, unless good cause for the delay is shown."

In view of this authority it is certainly not open to the applicants to apply now for substitution of heirs of Khetal Singh.

5. The revision application abates as a whole and is accordingly dismissed with costs.