

Mohammad Arif vs Allah Rabbul Alamin And Ors. on 15 February, 1982

Equivalent citations: 1982(1)SCALE543, (1982)2SCC455, AIR 1982 SUPREME COURT 948(1), 1982 (2) SCC 455

Bench: A.P. Sen, V.D. Tulzapurkar

JUDGMENT

1. Special Leave Petition granted.

2. After hearing counsel on either side we are satisfied that the High Court's order stating that the appeal had abated and the appellant Mohammad Arif could not be brought on record as a legal representative of Mohammad Ahmad is clearly wrong. It is true that the appellant did not prefer any appeal to the District Court against the original decree but in the First Appeal he was a party respondent. But that apart, in the second appeal itself Mohammad Arif had been joined as co-appellant along with his vendor, Mohammad Ahmed. On the death of Mohammad Ahmad all that was required to be done that the appellant who was on record should have been shown as a legal representative inasmuch as he was the transferee of the property in question and at least as an inter-meddler was entitled to be treated as legal representative of Mohammad Ahmed. He being on record the estate of the deceased appellant qua the property in question was represented and there was no necessity for application for bringing the legal representatives of the deceased appellant on record. The appeal in the circumstances could not be regarded as having abated and Mohammad Arif was entitled to prosecute the appeal. We, therefore, set aside the order of the High Court and send the appeal back to the High Court for disposal according to law.

3. This disposes of the appeal with no order as to costs.