

Custodian Of Branches Of Banco ... vs Nalini Bai Naique on 28 April, 1989

Equivalent citations: 1989 AIR 1589, 1989 SCR (2) 810, AIR 1989 SUPREME COURT 1589, (1990) 1 CIVLJ 314, (1989) 2 APLJ 54, (1989) 2 MAD LJ 25, (1992) 2 BANKLJ 117, 1989 SCC (SUPP) 2 275, (1989) 2 MAD LW 134

Author: K.N. Singh

Bench: K.N. Singh, K.N. Saikia

PETITIONER:

CUSTODIAN OF BRANCHES OF BANCO NATIONALULTRAMARINO.

Vs.

RESPONDENT:

NALINI BAI NAIQUE

DATE OF JUDGMENT 28/04/1989

BENCH:

SINGH, K.N. (J)

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SINGH, K.N. (J)

SAIKIA, K.N. (J)

CITATION:

1989 AIR 1589 1989 SCR (2) 810
1989 SCC Supl. (2) 275 JT 1989 Supl. 159
1989 SCALE (1) 1410

ACT:

Portugees Law of Inheritance in Goa-Holder of 'Meeira' rights-Whether legal heir--Whether competent to be substituted as a party under the Code of Civil Procedure.

Code of Civil Procedure, Order XXII, Rule 4: Holder of 'Meeira' rights under the Portugees Law of Inheritance--Whether a 'legal representative'--Whether represents the entire estate--Other heirs not brought on record within time--Suit whether abates.

'Legal representative'--Connotation of--Code of Civil Procedure. 1908, O.22. R. 4.

HEADNOTE:

The appellant bank instituted a suit against respond-

ent's husband for recovery of a large amount advanced as loan. The defendant contested the suit. issues were flamed and evidence was being recorded. He, however, died before the next hearing on 4th November, 1970 when the court was informed by his pleader orally about his demise. The appellant on inquiry learnt on 7th November that the defendant had died on 4th August. The 8th November being Sunday, an application under Order XXII Rule 4 of CPC was filed on 9th November for bringing on record the widow as his legal representative. Another application for condoning delay in making the application was also made. The appellant later made another application requesting to treat the latter application as an application under Order XXII Rule 9 for setting aside the abatement of the suit. These applications were contested by the respondent on the ground that the news regarding the death of her husband had been published in the local newspapers and the plaintiffs had knowledge of his death, and that the suit had abated as no application for setting aside abatement had been filed within time.

In the meanwhile, the appellant made another application for adding the names of four sons and two daughters of the deceased defendant on the ground that earlier it had no knowledge about that. On behalf of the respondent, it was asserted that the application for

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substitution was not maintainable as it was filed beyond time, and in the alternative she was not the legal heir of the deceased defendant but only his "Meeira" and as other legal heirs of the deceased defendant were not brought on record within time the application was not maintainable.

The trial court found that the application under Order XXII Rule 4 was not barred by time since it had been filed within four days of coming to know of defendant's death. It further held that since the widow, one of the legal representatives of the deceased-defendant, was brought on record within time the sons and daughters could also be impleaded as defendants along with her. It, therefore, set aside the abatement of the suit.

The Judicial Commissioner, however, took the view that the widow was not a legal representative of the deceased as under the Portuguese Law she had acquired Meeira rights and her status was not that of 'Cabeca De Casal' (Head of the family and administrator) of the other heirs of the deceased. Since all the heirs of the deceased defendant had not been brought on record alongwith the widow within time, the suit had abated as she alone could not represent the estate of the deceased defendant.

Allowing the appeals,

HELD: 1.1 The trial court committed no error in law in allowing the substitution application. [815EF]

1.2 A 'legal representative' as defined in Civil Procedure Code means a person who in law represents the estate of a deceased person, and includes any person who intermeddles

with the estate of the deceased and where a party sues or is sued in representative character the person on whom the estate devolves on the death of the party so suing or sued. The definition is inclusive in character and its scope is wide, it is not confined to legal heirs only instead it stipulates a person who may or may not be heir, competent to inherit the property of the deceased but he should represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without rifle either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. If there are any heirs, those in possession bona fide, without there being any fraud or collusion, are also entitled to represent the estate of the deceased. The Civil Procedure Code was applicable to the proceedings in the instant case. [814G-815A] 812

1.3 The respondent had acquired 'Meeira' rights under the Portuguese Law of Inheritance, which was applicable to Goa at the relevant time, according to which she had acquired half share in the estate left by her husband and the remaining half share was inherited by sons and daughters of the deceased. As she was brought on record within time, she represented the estate of the deceased defendant and the suit could proceed on merits. The impleadment of other legal representatives at a subsequent stage could not affect validity of the proceedings. [815B, 816C]

Daya Ram & Ors. v. Shyam Sundari, [1965] 1 SCR 231 and N.K. Mohd. Sulaiman v. N.C. Mohd. Ismail, [1966] 1 S.C.R. 937, referred to.

Mannem Venkataramaih v. M. Munnemma & Ors., AIR 1963 A.P. 406, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1154-1155 (N) of 1974.

From the Judgment and Order dated 30.6.1972 of the Court of Judicial Commissioner of Goa, Daman and Diu in Civil Revision Application Nos. 13 and 14 of 1972.

Anil Dev Singh and Miss A. Subhashini for the Appellant. S.K. Mehta and Dhruv Mehta for the Respondent. The Judgment of the Court was delivered by SINGH, J. This appeal is directed against the judgment and order of the Judicial Commissioner, Goa dated 30.6.1972 setting aside the order of the Civil Judge, Senior Division, Panaji and declaring that the suit instituted by the appellant had abated.

The appellant Bank instituted a suit before the Civil Judge for recovery of an amount of Rs. 63,315 against Vinnaique Naique, advanced to him as loan by it. Vinnaique Naique, the defendant contested

the suit, issues were framed and evidence was being recorded. On 26.2.1970 statement of PW-I was recorded and the case was adjourned to another date but on that date also the case was adjourned to 23.7.1970. The suit was again adjourned on 23.7.1970 on the ground that the defendant Vinaique Naique was indisposed and was hospitalised. Thereafter, the suit was taken up for hearing on 4.11.1970. On that date the defendant's pleader informed the Court orally that the defendant had died at Margaon but did not give any further details. The Custodian of the appellant Bank Panaji deputed his clerk to Margaon to collect necessary information and to obtain death certificate from the Civil Registration Office if the defendant was found to be dead. The clerk visited Margaon on 5th and 6th November, 1970 and on enquiry he came to know that the defendant had died on 4.8.1970, he obtained death certificate from the Civil Registration Office on 6.11.1970 and handed over the same to the Custodian of the Bank on 7th November, 1970. Since 8th November, 1970 was Sunday, the Custodian could not file the same in the court. The appellant made application under Order XXII Rule 4 of CPC on 9th November, 1970 for bringing on record Smt. Nalini Bai Naique as the legal representative of the deceased original defendant. He made another application for condoning delay in making the application duly supported by affidavit. The appellant made another application requesting the court to treat his earlier application made for condonation of delay as an application under Order 22 Rule 9 for setting aside the abatement of the suit. Smt. Nalini Bai Naique late defendant's widow contested the applications on the ground that the news regarding the death of Vinaique Naique had been published in the local newspapers and the plaintiff had knowledge of his death and further the suit had abated on the expiry period of 30/60 days of the death of original defendant-as no application for setting aside abatement had been filed within time. Meanwhile the appellant made another application for adding the names of six heirs four sons, one major son and three minor sons and two minor daughters of the deceased defendant Vinaique Naique on the ground that earlier the appellant had no knowledge about the sons and daughters of the deceased defendant. On behalf of Mrs. Nalini Bai it was vehemently asserted before the trial court that the application for substitution was not maintainable as it was filed beyond time, and in the alternative she was not the legal heir of the deceased defendant but she was only his 'Meeira' and as other legal heirs of the deceased defendant were not brought on record within time the application for bringing the sons and daughters on record was liable to be rejected. The trial Judge on an elaborate consideration of the rival contentions held that even though the news relating to the death of original defendant Vinaique Naique had been reported in local newspapers but in view of the affidavit of Custodian and other material on record the appellant Bank came to know of the death of the defendant only on 4.11.1970 from the deceased defendant's lawyer in the court and within four days thereof application for bringing the legal representative of the deceased defendant was made, therefore, the application made under Order XXII Rule 4 was not barred by time. The learned Judge further held that since Smt. Nalini Bai Naique one of the legal representative of the deceased defendant was brought on record within time, the sons and daughters could also be impleaded as defendants along with her. On these findings the learned Judge by his order dated 16.11.1971 set aside the abatement of the suit and directed for substituting the name of the widow Smt. Nalini Bai Naique along with the name of four sons and two daughters as defendants to the suit in place of deceased defendant Vinaique Naique. Mrs. Nalini Bai filed a revision application under Section 115 of Code of Civil Procedure before the Judicial Commissioner of Goa at Panaji against the aforesaid order of the trial Judge. The Judicial Commissioner by his order dated 30.6.1972 set aside the order of the trial Judge and declared the suit to have abated. Aggrieved the plaintiff Bank has preferred

this appeal after obtaining special leave.

The learned Judicial Commissioner interfered with the order of the trial Judge on the sole ground that Mrs. Nalini Bai whose name was proposed to be brought on record was not legal representative of the deceased Vinaique Naique as under the Portuguese Law she being the widow had acquired Meeira rights and her status was not that of "Cabeca De Casal" (Head of the family and administrator) of the other heirs of deceased Vinaique Naique. Since all the heirs of the deceased defendant had not been brought on record along with Mrs. Nalini Bai within time the suit abated as Mrs. Nalini Bai alone could not represent the estate of the deceased defendant. The learned Judicial Commissioner did not interfere with other findings recorded by the trial Judge, instead he set aside the order of the trial Judge on the sole ground as aforesaid, and declared the suit to have abated.

After hearing learned counsel for the parties, we are of opinion that the learned Judicial Commissioner committed serious error of law in setting aside the order of the trial Judge. "Legal representative" as defined in Civil Procedure Code which was admittedly applicable to the proceedings in the suit, means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The definition is inclusive in character and its scope is wide, it is not confined to legal heirs only instead it stipulates a person who may or may not be heir, competent to inherit the property of the deceased but he should represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". If there are many heirs, those in possession bona fide, without there being any fraud or collusion, are also entitled to represent the estate of the deceased. In the instant case it is not disputed that under the Portuguese Law of Inheritance which was applicable to Goa at the relevant time Mrs. Nalini Bai had acquired "Meeira rights" according to which she had acquired half share in the estate left by the deceased Vinaique Naique and the remaining half share was inherited by sons and daughters of the deceased who were subsequently brought on record. On the admitted facts Mrs. Nalini Bai therefore represented the estate of the deceased Vinaique Naique. Once the name of Mrs. Nalini Bai was brought on record within time and the application for setting aside abatement was allowed by the trial Judge, the suit could proceed on merits and the mere fact that the remaining legal representatives were brought on record at a subsequent stage could not render the suit defective. The Custodian of the appellant Bank had no knowledge that there were other legal representatives of deceased defendant along with Mrs. Nalini Bai. He had filed affidavit that on making diligent and bona fide inquiry, he had come to know that Nalini Bai was the sole legal representative but later on he acquired knowledge that the deceased had left four sons and two daughters as legal representatives, along with Mrs. Nalini Bai, therefore, he made another application for bringing them on record. The trial Judge accepted the testimony of the Custodian, and placing reliance on the decision of Andhra Pradesh High Court in *Mannem Venkataramaih v. M. Munnemma & Ors.*, AIR 1963 A.P. 406 he allowed the substitution application. The trial court committed no error in law, instead he applied correct principles of law.

In *Daya Ram & Ors. v. Shyam Sundari*, [1965] 1 SCR 231 this Court recognised the principle of representation of the estate by some heirs, where the defendant died during the pendency of the suit to enforce claim against him and all the heirs are not brought on record within time. This Court held that if after bona fide inquiry, some, but not all the heirs, of a deceased defendant, are brought on record the heirs so brought on record represent the entire estate of the deceased and the decision of the Court in the absence of fraud or collusion binds even those who are not brought on record as well as those who are impleaded as legal representatives of the deceased defendant. In *N.K. Mohd. Sulaiman v. N.C. Mohd. Ismail*, [1966] 1 SCR 937 this Court rejected the contention that in a suit to enforce a mortgage instituted after the death of a Muslim, if all the heirs of the deceased were not impleaded in the suit and a decree was obtained, and in execution the property was sold, the auction purchaser could have title only to the extent of the interest of the heirs who were impleaded, and he could have no title to the interest of those heirs who had not been impleaded to the suit. The Court held, that those who were impleaded as party to the suit in place of the deceased defendant represented the entire estate as they had share in the property and since they had been brought on record the decree was binding on the entire estate. In the instant case Mrs. Nalini Bai had admittedly half share in the property left by the deceased defendant and as she was brought on record within time, she represented the estate of the deceased defendant and the suit could proceed on merit. In this view the impleadment of other legal representatives at a subsequent stage could not affect validity of the proceedings. In the result we allow the appeal and set aside the judgment and order of the Judicial Commissioner dated 30.6.1972, and restore the order of the trial Judge. Since trial of the suit has been delayed, we direct the trial court to make every effort to decide the suit expeditiously. The appellant is entitled to its costs throughout.

P.S.S.

Appeal allowed.