

Supreme Court of India

Smt. Gema Coutinho Rodrigues vs Bricio Francisco Pereira And ... on 2 April, 1993

Equivalent citations: AIR 1994 SC 1199, JT 1993 (3) SC 544, 1993 (2) SCALE 458, (1993) 2 SCC 620

Bench: K Singh, Y Dayal

JUDGMENT

1. Leave granted. Appeal heard.

2. This appeal by special leave is against the judgment of the Panaji Bench, Goa of the Bombay High Court dated 11-1-1983 whereby the learned Single Judge of the High Court upheld the order dated 19-3-1979 passed by the Trial Court.

3. The order of the Trial Court dated 19-3-1979 came to be passed in the following circumstances:

4. On 8-2-1974 the appellant herein was appointed as next friend of her parents under Order 32 Rule 15 of the CPC and in April, 1974, the appellant, who is the daughter, filed a suit on behalf of her father and mother as their next friend, inter alia praying that Power of Attorney dated 6-9-1972 purporting to have been executed by her father be declared null and void. The Power of Attorney purports to have been executed in favour of one son Mr. Basilio Cancio Coutinho and in favour of Mr. Bricio Francisco Periera, brother-in-law of Concio Coutinho. The plaintiffs also challenged in the said suit one sale deed dated 20-9-1972 and two gift deeds dated 18-10-1972 and 2-11-1972 purporting to have been executed in pursuance of the aforesaid Power of Attorney.

5. It appears that the son namely Mr. Cancio Coutinho who is stated to be the brother of the appellant died before the filing of the suit on 19-10-1972. After the filing of the suit the appellant's father on whose behalf a suit had been filed died on 14-7-974 but no application was filed for bringing on record the legal heirs of the father since the mother (wife of the deceased father) was also the legal heir, already on the record. It appears that the mother on whose behalf the suit had also been filed and continued died on 18-1-1978 and the appellant who is the daughter filed an application on 11-4-1978 under Order I Rule 10 (1) read with Order XXII of CPC for bringing on record the appellant herself as legal heir of the mother. This application was filed on 11-4-1978 but the Trial Court by its order dated 19-3-1979 dismissed the application in the view that once one of the plaintiffs died all his successors ought to be made parties to proceed with the suit and the applicant is not entitled to proceed with the suit alone in her own name. The High Court agreed with the Trial Court and dismissed the revision petition filed by the appellant by the impugned order dated 11-1-1983.

6. It appears that the gift deeds were made by deceased brother's brother-in-law in pursuance of Power of Attorney in his favour. So long as one of the heirs has been brought on record who substantially represented estate of deceased plaintiff, the application could not be dismissed on the ground that the suit has abated or it could not proceed. Trial Court should have directed the appellant to implead other heirs if any, of the deceased mother who was also a party to the suit by way of defendants. But the application for being brought on record by the appellant could not have been rejected. We, accordingly, set aside the order of the Trial Court dated 19-3-1979 as well as the

order of the High Court dated 11-1-1983 and direct the Trial Court to bring the appellant on record as legal heir of the deceased plaintiffs and permit the appellant to implead any other heirs as co-defendants.

7. We place on record our appreciation for the services rendered to this Court by Mr. H.S. Munjral, Advocate who was appointed as Amicus Curiae, since the legal heirs and respondents, in spite of substituted service, were unrepresented and he very fairly represented them before this Court on behalf of the respondents. The appeal is allowed with the above directions. No Costs.