Supreme Court of India
Bhagwan Swaroop And Ors. vs Mool Chand And Ors. on 3 February, 1983
Equivalent citations: AIR 1983 SC 355, 1983 (31) BLJR 228, 1983 (1) SCALE 204, (1983) 2 SCC 132
Author: A N Sen
Bench: A Sen, D Desai
JUDGMENT

1. Special leave granted.

2. Father of appellants Nos. 1 and 2 one Shri Maharaj Swamp and 8 others filed a suit against defendant No. 1 Sh. Ganesh Narain Mathur and defendant No. 2 one Sh. Mool Chand for partition and possession of the undivided share in the properties get out in Sch. 'B' annexed to the plaint. In respect of properties set out in Sch. 'C', plaintiffs claimed undivided half share with defendant No. 1 Ganesh Narain Mathur. There was also a claim for partition for other properties set out in the plaint. This suit ended in a preliminary decree declaring the share of plaintiffs on one hand and defendants Nos. 1 and 2 on the other band and certain directions were given for rendering accounts by different parties to the suit. A direction was given that a Commissioner be appointed for effecting partition according to the preliminary decree and for taking accounts. The preliminary decree was dated Jan 11, 1972. Plaintiff Maharaj Swaroop preferred 1st Appeal No. 67 of 1972 in the High Court of Judicature for Rajasthan at Jaipur. It appears that during the pendency of the appeal, appellant Maharaj Swaroop died and his heirs and legal representatives were substituted. In this appeal Ganesh Narain Mathur, original defendant No. 1, was impleaded as respondent No. 1. During the pendency of the appeal, respondent No. 1 (original defendant No. 1) Ganesh Narain Mathur died on Feb. 10, 1977. On Aug. 30, 1981, Mool Chand, respondent No. 2 (original defendant No. 2) moved an application that original respondent No. 1 Ganesh Narain Mathur having expired on Feb. 10, 1977 and his heirs and legal representatives having not been substituted, the appeal abates as a whole. It was alleged that appellant No. 2 Sh. Dhanna Lal, appellant No. 3 Sh. Sital Prashad, appellant No. 4 Sh. Amba Swaroop and pro forma respondent No. 3 Sh. Manmohan Lal were Cully aware of the demise of respondent No. 1 Ganesh Narain Mathur on Feb. 10. 1977 because all of them attended the funeral of Shri Ganesh Narain Mathur. It was further contended that even then for a long period appellants have taken no steps for impleading the heirs and legal representatives of deceased respondent No. 1, the appeal be disposed of having abated. At that stage, appellants moved an application on Sept. 4, 1981 under Order 22, Rule 4, Civil P. C. for substitution. Before this application could be disposed of, one Prabhu Narain claiming the son of deceased respondent No. 1 Ganesh Narain Mathur moved an application under Orde. 1, Rule. 10, CPC praying that he and others mentioned in the application be impleaded as heirs and legal representatives of deceased respondent No. 1 Ganesh Narain Mathur. To this a counter was filed by the 2nd respondent Mool Chand contending that the said application was not maintainable.

3. A Division Bench of the Rajasthan High Court held that the preliminary decree was one whole and indivisible and as shares have been defined by the preliminary decree, if the appeal is proceeded with in the absence of the heir and legal representatives of the deceased respondent No. 1 Ganesh Narain Mathur, it would result in inconsistent decrees and therefore, the appeal abates as a whole. The High Court rejected the application of the legal representatives of deceased respondent No. 1

Ganesh Narain Mathur moved under Order 1, Rule 14, C. P. C. observing that the provisions of Order 1, Rule 10 cannot override specific provisions of Order 22. As the limitation for taking action under Order 22 having long since expired, the consequence cannot be circumvented by resort to the provisions of Order 1, Rule 10. So saying the High Court rejected the application of the heirs and legal representatives of deceased respondent No. 1. As a consequence, the High Court disposed of the appeal as abated as a whole. It is against this order that the present appeal is filed.

4. It is true that it was incumbent upon the appellant to implead the heirs and legal representatives of deceased respondent No. 1 in time. It is equally true that the appellants were negligent in moving the proper application. We would not question the finding of the High Court that appellant Nos. 2, 3 and 4 knew about the death of the deceased respondent No. 1. This being a suit for partition of joint family property, parties are closely interrelated and it is reasonable to believe that at least some of the appellants must have attended the funeral of deceased respondent No. 1, as contended on behalf of the contesting respondent No. 2. There is some force in the contention that when a specific provision is made as provided in Order 22, R. 4, a resort to the general provision like Order 1, Rule 10 may not be appropriate. But the laws of procedure are devised for advancing justice and not impeding the same. In Sangram Singh v. Election Tribunal, Kotah , this Court observed that a Code of Procedure is designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. This was reaffirmed in Kalipar Das v. Bimal Krishna Sen .

5. In a suit for partition, the position of plaintiffs and defendants can be interchange-' able. It is that each adopts the same position with the other parties. Other features which must be noticed are that the appeal was filed somewhere in 1972. It had not come up for hearing and the matter came on Board only upon the application of the second respondent intimating to the Court that the 1st respondent had died way back and as his heirs and legal representatives having not been substituted, the appeal has abated. Wheels started moving thereafter. Appellants moved an application for substitution. The matter did not end there. Heirs of deceased respondent No. 1 then moved an application for being brought on record. If the application bad been granted, the appeal could have been disposed of in ,the presence of all the parties. The difficulty High Court experienced in granting the application disclosed with great respect, a hyper-technical approach which if carried to end may result in miscarriage of justice. Who could have made the most serious grievance about the failure of the appellants to substitute the heirs and legal representatives of deceased respondent No. 1. Obviously the heirs of deceased respondent No. 1 were the persons vitally interested in the outcome of the appeal. They could have contended that the appeal against them has abated and their share has become unassailable. That is not their case. They on the contrary, want to be impleaded and substituted as heirs and legal representatives of deceased respondent No. 1. They had absolutely no grievance about the delay in bringing them on record. It is die second respondent who is fighting both the appellants and the 1st respondent who wants to derive a technical advantage by this procedural lapse. If the trend is to encourage fair play in action in administrative law, it must all the more inhere in judicial approach. Such applications have to be approached with this view whether sub-. stantial justice is done between the parties or technical rules of procedure are given precedence over doing substantial justice in Court. Undoubtedly, justice according to law; law to be administered to advance justice.

6. Having meticulously examined the contention advanced by the learned Counsel on behalf of respondent No. 2 Mool Chand, who is the only contesting respondent, we are satisfied that the application made by the appellants as well as the one moved by the heirs and legal representatives of deceased respondent No. 1 should have been allow-ed and the heirs and legal representatives of deceased should nave been substituted after setting aside abatement and condoning the delay in making the application.

7. As there is some negligence on behalf of the appellants in moving the application in time, original second respondent Mool Chand must be compensated by awarding him costs.

8. Accordingly, we allow this appeal set aside the judgment of the High Court dated 27th Jan., 1982 abating First Appeal No. 67 of 1972 preferred by the present appellants. The application made by the appellants before the High Court as well as the one made by the heirs and legal representatives of deceased respondent No. 1 are allowed and the heirs and legal representatives of deceased respondent No. 1 are substituted and brought on record after setting the abatement and condoning the delay in making the application. The matter is remitted to the High Court for disposal on merits. Appellants shall pay as and by way of costs Rs. 1,000/- to respondent No. 2 Mool Chand.

Amarendra Nath Sen, J.

9. I have read the judgment and order proposed to be delivered by my learned brother Desai, J.

10. My learned brother in his judgment has set out the facts material for the purpose of disposal of this case. It does not, therefore, become necessary to reproduce the same.

11. My learned brother in his judgment has held:

It is equally true that the appellants were negligent in moving the proper application, We would not question the finding of the High Court that appellants Nos. 2, 3 and 4 know about the death of the deceased respondent No. 1. This being a suit for partition of joint family property, parties are closely interrelated and it is reasonable to believe that at least some of the appellants must have attended the funeral of the deceased respondent No. 1, as contended on behalf of the contesting respondent No. 2. There is some force in the contention that when a specific provision is made as provided in Order 22, R. 4, a resort to the general provision like Order 1, Rule 10 may not be appropriate. But the laws of procedure are devised for advancing justice and not impeding the same. In Sangram Singh v. Election Tribunal, Kotah , this Court observed that a Code of Procedure is designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. This was reaffirmed in Kalipar Das v. Bimal Krishna Sen .

12. It is no doubt true that a Code of Procedure 'is designed to facilitate justice and further its ends and it is not a penal enactment for punishment and penalty and not a thing designed to trip people up'. Procedural laws are no doubt devised and enacted for the purposes of advancing justice. Procedural laws, however, are also laws and are enacted to be obeyed and implemented. The laws of procedure by themselves do not create any impediment or obstruction in the matter of doing justice

to the parties. On the other hand, the main purpose and object of enacting procedural laws is to see that justice is done to the parties. In the absence of procedural laws regulating procedure as to dealing with any dispute between the parties, the cause of justice suffers and justice will be in a state of 'confusion and quandary. Difficulties arise when parties are at default hi complying with the laws of procedure. As procedure is aptly described to be the hand-maid of justice, the Court may in appropriate cases ignore or excuse a mere irregularity in the observance of the procedural law in the larger interest of justice. It is, however, always to be borne in mind that procedural laws' are as valid as any other law and are enacted to be observed and have not been enacted merely to be brushed aside by the Court Justice means justice to the parties in any particular case and justice according to law. If procedural laws are properly observed, as they should be observed, no problem arises for the Court for considering whether any lapse in the observance of the procedural law needs to be excused or overlooked. As I have already observed depending on the facts and circumstances of a particular case in the larger interests of administration of justice the Court may and the Court in fact does, excuse or overlook a mere irregularity or a trivial breach in the observance of any procedural law for doing real and substantial justice to the parties and the Court passes proper orders which will serve the interests of justice best.

13. Excuse of lapses in compliance with the laws of procedure, as a matter of course, with the avowed object of doing substantial justice to the parties may in many many cases lead to miscarriage of justice.

14. Civil Procedure Code requires that in the event of death of a particular party, heirs and legal representatives of the deceased have to be brought on record within a particular period, provided the cause of action survives. If the legal representatives are not brought on record within the stipulated period, certain consequences follow and the action abates either wholly or partially depending on the facts and circumstances of a particular case. The Code further provides that an application may be made for setting aside the abatement within a stipulated period. It is now well settled that an abatement can be set aside at any time even beyond the period prescribed for making an application for setting aside the abatement, if sufficient cause is shown explaining the delay in the making of the application. If, irrespective of the provisions of the Code and the merits of the case, abatements are to be set aside as a matter of course merely on the ground that abatement is only a consequence of non-compliance of law of procedure and substantial justice is denied to the parties, the result may really amount to a denial of justice and in an indefinite prolongation of a litigation

15. The provision fixing a particular time for making an application for bringing legal representatives on record with the consequence of the suit or appeal abating if no application is made within time, have been enacted for expeditious disposal of cases in the interest of proper administration of justice. It is further to be borne in mind that when a suit or an appeal abates, is very valuable right accrues to the other party and such a right is not to be ignored or interfered with lightly in the name of doing substantial justice to the party, as depriving a party of a lawful right created in the interest of administration of justice in the absence of good grounds results in injustice to the party concerned. For doing justice to the parties, the Courts have consistently held that whenever sufficient cause is shown by a party at default in making an application for substitution,

abatement will have to be set aside as the good cause shown for explaining the delay in making the application is sufficient justification, to deprive the other party of the right that may accrue to the other party as a result of the abatement of the suit or appeal. The Courts have also consistently ruled that laches or negligence furnish no proper grounds for setting aside the abatement. In such cases, a party guilty of negligence or laches must bear the consequences of his laches and negligence and must suffer. In appropriate cases, taking into consideration all the facts and circumstances of a case, the Court may set aside the abatement, even if there be slight negligence or minor laches in not making an application within the time provided an overall picture of the entire case, requires such course for furthering the cause of justice. When negligence and laches are established on the part of the party who seeks to set aside the abatement, the application of such a party should be entertained only in the rarest of cases for furthering the ends of justice only and on proper terms.

16. In the present case, the appeal has been filed against a preliminary decree in a partition suit. A partition suit stands on a peculiar footing. In a partition suit any of the party can claim transposition from the category of the defendant to the category of the plaintiff and vice-versa. With the passing of the preliminary decree, shares of the parties are declared and rights of the parties pending the passing of the final decree are to an extent determined. As a result of the passing of the preliminary decree, certain rights do accrue to the parties subject to the results of the appeal filed. There is no doubt that there has been some amount of negligence on the part of the appellant in not making the application for substitution within time. The appellant had full knowledge of the death of the respondent who was a near relation of the appellant. The application made by the heirs of the deceased for substitution under Order 1, Rule. 10 of the CPC is indeed misconceived and has been rightly held to be so by the High Court. To my mind, it cannot be said that the High Court had acted improperly or illegally in the facts and circumstances of this case in refusing to set aside the abatement. I have my doubts, as to whether it is proper for this Court to interfere with such orders passed by the High Court.

17. My learned brother is, however, of the view that in the facts and circumstances of this case, the orders of the High Court refusing to set aside the abatement and to bring the legal representatives on record should be set aside and the appeal should be heard on merits by the High Court.

18. In the peculiar facts and circumstances of this case, bearing in mind that the appeal is from a preliminary decree in a partition suit in which the heirs and legal representatives of the deceased respondent had also made an application, though 'misconceived, for being substituted and brought on record. I do not propose to press my doubts to the point of dissent. Hearing of the appeal on merits, in the instant case, cannot cause any irreparable prejudice to the parties though there can be no doubt that partition proceedings will have to be unnecessarily prolonged.

19. With these observations I agree with the order proposed by my learned brother.