Hemareddi (D) Through Lrs. vs Ramachandra Yallappa Hosmani . on 7 May, 2019

Equivalent citations: AIR 2019 SUPREME COURT 3297, 2019 (6) SCC 756, AIRONLINE 2019 SC 368, 2019 (3) AKR 819, (2019) 2 CLR 35 (SC), (2019) 2 CURCC 314, (2019) 2 WLC(SC)CVL 419, (2019) 3 CIVLJ 701, (2019) 3 RECCIVR 128, 2019 (4) KCCR SN 274 (SC), (2019) 5 ANDHLD 136, (2019) 7 SCALE 637, AIR 2019 SC (CIV) 2424

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Bench: K.M. Joseph, Ashok Bhushan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4103 OF 2008

HEMAREDDI (D) THROUGH LRs. ....APPELLANT(S)

VERSUS

RAMACHANDRA YALLAPPA HOSMANI
AND ORS. ....RESPONDENT(S)

J U D G M E N T

K.M. JOSEPH, J.

1. This appeal by special leave is directed against the order of the High Court in Regular First appeal No.717 of 1998. By the impugned judgment, the High Court has taken the view that the appeal filed by the appellant does not survive for consideration. This is on the following reasoning:

> The appeal was filed by the appellant and his late brother against the judgment by the trial court dismissing the suit filed by them. The relief in the suit was to declare that defendant No.1 was not the adopted son and he has no title or interest over the suit property and for prohibitory injunction against the defendant not to disturb the joint possession of the suit agricultural land of the plaintiff and defendant No.2.

2. It was the appellants case that one Govindareddi, the propositus died in 1946. He left behind him two sons and a daughter. The plaintiffs were the children of one of the sons. The second defendant was the wife of the other son Basavareddi. The suit properties were the properties of the joint family of Govindareddi and his sons it was claimed. The plaintiffs have filed another suit as O.S. No.66 of 1990 against the second defendant for declaration that she has no right in the property. Injunction was also sought. Injunction was ordered against her. On the ill advice of some advisors it was their case that she has created a false document of adoption dated 27.04.1991 adopting the first defendant. Defendants 3 and 4 are alleged to have given to the first defendant on adoption to the second defendant. The trial Court dismissed the suit and therefore upheld the adoption. Against the said judgment as noted, both the plaintiffs preferred first appeal before the High Court. It is while so that during the pendency of the appeal the second plaintiff/second appellant died. The LRs of the second appellant were not brought on record. The appeal, therefore, abated qua the second appellant. The High Court took the view that having regard to the decree which has been passed the appeal would abate not only qua the second appellant/ plaintiff but as a whole and accordingly it was so ordered.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellant drew our attention to the following orders passed by the High Court in the appeal and referred to in the impugned judgment:

> "8. When the matter was listed on 20th July, 2001, this court observed thus:
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> It is stated by the learned counsel for the appellant that the second appellant (plaintiff No.2) is died and in view of the death of second appellant, the matter is adjourned by two weeks to enable the appellants' counsel to take steps."
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> 9. The appeal was relisted on 10.09.2001. This court has observed thus:
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> Hence the appeal filed against the appellant No.2 abates. Memo filed by appellant No.1 submitting himself and appellant No.2 are brothers and co-owners of suit schedule property. Since the LRs of appellant No.2 have not evinced interest to prosecute the appeal, appellant No.1 prays permission to prosecute the appeal. Accordingly, permission is granted."

5. Learned counsel for the appellant would contend that the appellant herein could have filed a separate suit seeking the same relief.

Learned counsel for the appellant relied upon the order passed on 10/09/2001 and contended that though the LRs of the appellant No.2 did not evince interest to prosecute the appeal, the petitioner who is appellant No.1 prayed for permission to prosecute the appeal. The permission was granted by the High Court. The respondents did not oppose the prosecution of the appeal filed by the appellant despite knowing that the second appellant did not choose to get themselves impleaded and the appeal would have abated qua him also. According to the appellant this would stand in the way of

the court and the respondents from proceeding on the basis that the appeal has abated as a whole. In other words, he contended that estoppel will operate against the appeal being dismissed on the death of the second appellant, and on the basis that the appeal has abated as a whole. He also drew our attention to the judgment of this Court in Sardar Amarjit Singh Kalra (Dead) BY LRS. and Others v. Pramod Gupta (Smt) (D) BY LRS. And Others; 2003 (3) SCC 272.

6. Per contra, learned counsel appearing for the respondents supported the order of the High Court. He contended that the order passed by the High Court will not operate as estoppel estopping them from contending that the appeal has abated as a whole. There would be conflict of decrees, as on the one hand, the trial Court has passed a decree upholding the adoption, and even if the High Court were to allow the appeal filed by the appellant and hold that the adoption was invalid, there will be two conflicting decrees, one by the trial Court which as far as the deceased second appellant is concerned, has become final and another by the High Court taking a contrary view. This is not contemplated in law and therefore, the reasoning of the High Court is only to be supported.

7. Death of a party during the currency of a litigation indeed has given rise to vexed questions. Procedure is the hand maiden of justice, the technicalities of law should not be allowed to prevail over the demands of justice and obstacles in the path of the Court considering a case on merit should not ordinarily become insuperable. On the other hand, if the so called procedural requirement is drawn from a wholesome principle of substantive law to advance the cause of justice, the same may not be overlooked.

Order XXII Rule 3 C.P.C.

“3. Procedure in case of death of one of several plaintiffs or of sole plaintiff (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.”

8. There can be no doubt that Order XXII Rule 3 is applicable also to appeals filed under Order

41. Order XXII Rule 3 declares that where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone inter alia the Court on an application can substitute the legal representatives of the deceased plaintiff and proceed with the suit. Sub-rule (2) provides that if it is not so done, the suit shall abate as far as the deceased plaintiff is concerned. Order XXII Rule (3) therefore is applicable when either a suit or an appeal is filed by more than one plaintiffs or appellants as the case may be. This is no doubt apart from it applying when there is a sole plaintiff or sole appellant. In such a situation, on the death of one of the plaintiffs or appellants

and the right to sue does not survive to the remaining plaintiff/plaintiffs or appellant/appellants alone, then the LRs of the deceased party can come on record. Should he not do so, ordinarily, the proceeding will abate as far as the deceased party is concerned.

9. Let us first of all examine whether the right to sue survived to the appellant alone or the right to sue was available to the LRs of the deceased appellant as well. It is quite clear that there were legal representatives available for the second appellant. This is not a case where the estate of the second appellant would pass to the appellant herein by survivorship or otherwise. Therefore, the first requirement is fulfilled for allowing Order XXII Rule 3 to operate. Admittedly, steps were not taken for substitution in regard to the second appellant. The appeal, therefore, abated qua him as is declared by Order XXII Rule 3(2). Though this is all that the Order XXII Rule 2 declares, the principle has evolved that in certain kinds of litigation, the consequences of abatement qua a party is not limited to the deceased party alone but it affects all the other parties and the litigation itself. In other words, a suit or an appeal as the case may be, would suffer an untimely demise by the proceeding abating as a whole.

10. The question which we are called upon to answer is whether this is such a case? The allegation in the plaint as we have noticed is that the suit properties are joint properties and the second defendant had no exclusive right to the property. She had created a false document described as an adoption deed by which she has purported to adopt the first defendant. The first defendant cannot claim any right to the suit property as an adopted son. On the alleged date of adoption, the husband of the second defendant was alive. He had died on 16.04.1987, in jointness with the plaintiffs. The plaintiffs were the joint owners of the suit land and also other property. When Basavareddi, the husband of the second defendant was alive, she has no right to take the first defendant on adoption. Defendant No.1 cannot claim any title interest or right over the suit property.

11. In this case having noted pleadings and the relief sought we can proceed on the basis that it was the appellant's case that the plaintiff's property was the joint family property belonging to the appellant and his deceased brother. The trial Court dismissed the suit. The result is that the adoption of the 1st defendant by the 2nd defendant which was challenged by the appellant and his late brother was upheld. The said judgment was called in question in a Single Appeal by the appellant and his late brother. It is while the appeal was so pending that the late brother passed away. The appeal having abated in regard to the late brother, the decree of the trial Court has become final qua the deceased brother of the appellant. The effect of the same is that the adoption is found legal. The result of the appellant being allowed to proceed further and succeed in the appeal would be the passing of a decree by the High Court. The said decree would be to the effect that the adoption is invalid. The suit which was jointly filed by the appellant and his late brother would have to be decreed whereas the suit filed by the appellant and his late brother stands dismissed by the trial Court. Both the decrees cannot stand together. There would be irreconcilable conflict. The defendants are common. They would be faced with two decrees regarding the same subject matter which are irrevocably conflicting.

12. In State of Punjab vs. Nathu Ram AIR 1962 SC 89, the Punjab Government had acquired certain pieces of land belonging to two brothers. Upon their refusal to accept the compensation offered,

their joint claim was referred to arbitration on the basis that the land belong to them jointly. An award was passed in their favour. The Government appealed before the High Court. During pendency of the appeal, one of the brothers died. No application was filed to bring on record his LRs within the time limit. The High Court dismissed the appeal and reasoned that it abated against the person who has died and the appeal abated as a whole. It is useful to advert to what this Court has laid down in State of Punjab vs. Nathu Ram (Supra) at pages 638-640:

> ..... "The Code does not provide for the abatement of the appeal against the other respondents. Courts have held that in certain circumstances, the appeals against the co-respondents would also abate as a result of the abatement of the appeal against the deceased respondent. They have not been always agreed with respect to the result of the particular circumstances of a case and there has been, consequently, divergence of opinion in the application of the principle. It will serve no useful purpose to consider the cases. Suffice it to say that when O. XXII, r. 4 does not provide for the abatement of the appeals against the co-respondents of the deceased respondent, there can be no question of abatement of the appeals against them. To say that the appeals against them abated in certain circumstances, is not a correct statement. Of course, the appeals against them cannot proceed in certain circumstances and have therefore to be dismissed. Such a result depends on the nature of the relief sought in the appeal. The same conclusion is to be drawn from the provisions of O.I, r.9, of the Code which provides that no suit shall be defeated by reason of the misjoinder or non-joiner of parties and the Court may, in every suit, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. It follows, therefore, that if the Court can deal with the matter in controversy so far as regards the rights and interests of the appellant and the respondents other than the deceased respondent, it has to proceed with the appeal and decide it. It is only when it is not possible for the Court to deal with such matters, that it will have to refuse to proceed further with the appeal and therefore dismiss it.
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> The question whether a Court can deal with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this is possible or is not possible. It may, however, be stated that ordinarily the considerations which weigh with the Court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the Court. The test to determine this has been described in diverse forms. Courts will not proceed with an appeal (a) when the success of the appeal may lead to the Court's coming to a decision which be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the Court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those

respondents alone who are still before the Court and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective, that is to say, it could not be successfully executed.

There has been no divergence between the Courts about the Court's proceeding with the appeal between the respondents other than the deceased respondent, when the decree in appeal was not a joint decree in favour of all the respondents. The abatement of the appeal against the deceased respondent, in such a case, would make the decree in his favour alone final, and this can, in no circumstances, have a repercussion, on the decision of the controversy between the appellant and the other decree-holders or on the execution of the ultimate decree between them. The difficulty arises always when there is a joint decree. Here again, the consensus of opinion is that if the decree is joint and indivisible, the appeal against the other respondents also will not be proceeded with and will have to be dismissed as a result of the abatement of the appeal against the deceased respondent. Different views exist in the case of joint decrees in favour of respondents whose rights in the subject matter of the decree are specified. One view is that in such cases, the abatement of the appeal against the deceased respondent will have the result of making the decree affecting his specific interest to be final and that the decree against the other respondents can be suitably dealt with by the appellate Court. We do not consider this view correct. The specification of shares or of interest of the deceased respondent does not affect the nature of the decree and the capacity of the joint decree-holder to execute the entire decree or to resist the attempt of the other party to interfere with the joint right decreed in his favour. The abatement of an appeal means not only that the decree between the appellant, and the deceased respondent has become final, but also, as a necessary corollary, that the appellate Court cannot, in any way, modify that decree directly or indirectly. The reason is plain. It is that in the absence of the legal representatives of the deceased respondents, the appellate Court cannot determine anything between the appellant and the legal representatives which may affect the rights of the legal representatives under the decree. It is immaterial that the modification which the Court will do is one to which exception can or cannot be taken." (Emphasis supplied) The attempt of the State to contend that the brothers had equal share of land in the village records and therefore, the appeal should be proceeded with did not appeal to the court. This Court further proceeded to observe that the brother has made a joint claim and had a joint decree and the frame of the appeal was with reference to the decree challenged. The appeal failed. It will be immediately noticed that this was a case which involved Order XXII Rule 4. Order XXII Rule 4 reads as follows:

"4. Procedure in case of death of one of several defendants or of sole defendant - (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to

be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place."

13. The next decision we would notice is the decision in Ram Sarup vs. Munshi & Ors. 1963 (3) SCR

858. The case involved the death of one of the respondents during the pendency of the appeal filed by the State. The question involved was whether the right of preemption would continue to be available despite the repeal of the Punjab Alienation of Land Act, 1900. In one of the civil appeals, the pre-emptors who claimed the right of pre-emption who were 4 in number, obtained a decree against the vendees. The appellant vendees had purchased the property for Rs. 22,750/-. The appellant Nos.1 and 2 paid one half amounting to Rs.11,375/-. The other 3 appellants paid the other half. The sale deed showed that it was not a case of sale of separate items in favour of deceased-appellant but of one entire set of properties enjoyed by two set of vendees in equal share. Pending the appeal by the appellants vendees, the first appellant died and it abated as against him. In this set of facts this Court proceeded to hold that the decree being a joint decree and a part of the decree has become final by reason of the abatement, the entire appeal would abate. The reasoning was there could be no partial pre-emption because pre-emption was the substitution of pre-emptors in place of the vendees and it was found that if the decree in favour of the pre-emptors in respect of the share of the deceased vendee appellant had become final there would be two conflicting decrees if the appeal were to be allowed and the decree of pre-emption insofar as appellants 2 to 5 were concerned was interfered with. It must at once be noticed that Order XXII Rule 3 provides for the converse of Order XXII Rule 4. That is to say Order XXII Rule 3 deals with a case where one or more plaintiffs or appellants or the sole plaintiff or sole appellant dies during the pendency of the suit or appeal. Order XXII Rule 4 on the other hand deals with a case where one or more of the defendants in the suits or sole defendant or the respondents or sole defendant in the appeal dies. In both these cases it must be noticed that it is a condition precedent for the provisions to apply that the right to sue does not survive to the remaining plaintiffs/ appellants (Order XXII Rule

3) or the remaining one or two appellants and right to sue does not survive against the defendant or defendants in the suit or respondents in the appeal alone or the sole defendant or surviving defendants dies and the right to sue survives. It must be noted that Order XXII Rule 2 deals with a situation where there are more than one plaintiffs and defendants and any of them dies and the

right to sue survives to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the suit or the appeal shall be proceeded against at the instance of the surviving plaintiff or plaintiffs/appellant or appellants or against surviving defendant or defendants in the suit/respondents in the appeal.

14. In Ram Sarup vs. Munshi & Ors. (supra), nine persons instituted a suit for ejectment and recovery of rent against two defendants. The suit was decreed. In an appeal by the defendants, the decree of the Trial Court was set aside against the second defendant. During the pendency of the second appeal filed by all the plaintiffs, one of them died. His LRs were not brought on record and the appeal abated as far as such appellant was concerned. The objection raised by the respondents that the appeal could not be proceeded with as the appeal abated as a whole, was accepted. An attempt was made under Order XXII Rule 2 by contending that the nine appellants constituted a Joint Hindu Family and on the death of one of the appellants, the right to sue survived in favour of the remaining appellants, as at that time the Hindu Succession Act had not been passed, was repelled on facts by holding that the appellants did not constitute a Joint Hindu Family. Further attempt to draw support from Order XLI Rule 4, namely, that the appeal proceeded on a ground common to all the plaintiffs and defendants, and any one of the plaintiffs /defendants may appeal from the whole decree and the decree could be reversed or varied in favour of the plaintiffs or defendants was not accepted as it was found that Order XLI Rule 4 only enabled one of the plaintiffs/defendants to file an appeal and it would not apply in a case where all the plaintiffs had filed the second appeal. The Court took the view that the appeal abated as a whole as all the appellants had a common right in getting an ejectment against the second defendant and such a decree was on a ground common to all of them. It was further found that the defendants could not be ejected from the premises when he had a right to remain in occupation on the basis of a decree holding that a deceased-appellant, one of the persons having joint interest in letting out property could not have ejected him. It was further held that it was not possible for the defendant to continue as tenant of one of the landlords and not as a tenant of the others when all of them had a joint right to eject or to have him as their tenant.

15. In the judgment of this Court in Harihar Prasad Singh and Others vs. Balmiki Prasad Singh and Others 1975 (1) SCC 212, the issue involved was the acceptability of a custom set up by the plaintiff was that they were Bhumidar Brahmins by caste and under which custom more distant heirs than the shastric heirs also joined the latter in succession of a separate male member dying without any issue and leaving any widow. A preliminary objection was also raised that the appeal itself abated under the following facts:

> Plaintiff No.29 died in 1953. His widow and son were substituted. With the coming into force of the Hindu Succession Act, the share of the widow in her husband's estate became a full estate.
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> The widow, in turn, died in 1967. She left behind her daughter and her son. The son had already been impleaded upon the death of his father. The decree it was pointed out was one and indivisible and the whole appeal had abated, upon the widow dying not having impleaded her daughter, the whole appeal abated. This argument was

repelled after referring to all the authorities. This Court in Harihar Prasad Singh and Others vs. Balmiki Prasad Singh and Others (Supra) took the view inter alia as follows:

"32. The important point to note about this litigation is that each of the reversioners is entitled to his own specific share. He could have sued for his own share and got a decree for his share.

of 1934 and 20, 29 and 41 of 1935 were filed in respect of the same estate. In the present case also the suit in the first instance was filed by the first and second plaintiffs for their one-twelfth share. Thereafter many of the other reversioners who were originally added as defendants were transposed as plaintiffs. Though the decree of the trial Court was one, three appeals Nos.326, 332 and 333 of 1948 were filed by three sets of parties. Therefore, if one of the Plaintiffs dies and his legal representatives are not brought on record the suit or the appeal might abate as far as he is concerned but not as regards the other plaintiffs or the appellants." (Emphasis Supplied)

16. The last judgment we would like to refer to is the judgment relied on by the appellants and that is the judgment of the Constitution Bench in Sardar Amarjit Singh Kalra (Dead) by LRS. & Ors. vs. Pramod Gupta (Smt.)(Dead) by LRS. & Ors. 2003 (3) SCC 272. In the said judgment the matter arose under the Land Acquisition Act. The facts set out indicate inter alia that a joint appeal was filed by a number of proprietors. However, the court found that they had distinct and independent claims. The three different categories of claimants before the Land Acquisition Collector were noted as follows:

"3. An extent of about 5500 bighas of land described as "gair mumkin Pahar" (uncultivable mountainous area) situated at Masudpur Village within the Union Territory of Delhi was acquired by the Government for planned development of Delhi. Notifications were issued: (1) on 24.10.1961 for acquisition of 720 bighas and 4 biswas out of 4307 bighas and 18 biswas under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). It may be stated at this stage itself that an extent of 390 bighas of land notified on 24.10.1961 and acquired by passing the award in Award No.1944 does not form the subject-matter of these proceedings. Declarations under Section 6 of the Act were issued on 6.8.1966. In the course of the award enquiry claims were filed before the Land Acquisition Collector by three categories of claimants as hereunder:

i) Claims by the Union of India and the Gaon Sabha that the lands acquired stood vested with the Gaon Sabha they being "wasteland" under Section 7 of the Delhi Land Reforms Act, 1954.

This claim proceeded on the basis that not only was it `waste land' but also the Bhumidari Certificate issued in favour of Smt. Gulab Sundari was invalid and non est in law.

ii) The other class of claims were from the Proprietors/co-owners on the basis that the acquired land was not "land" as defined under Section 3(13) of the Delhi Land Reforms Act, since they were being used for non-agricultural purposes and therefore, they neither could be said to be "wasteland" nor could be held to have vested in the Gaon Sabha, for either of them to claim any title to the lands in question and, therefore, they continued to be proprietors of the soil and as such entitled to the compensation for themselves.

iii) Yet another claim was from Smt. Gulab Sundari and her transferees of portions of the rights over the land on the ground that she was the Bhumidhar of the land measuring about 4307 bighas and 18 biswas and those lands were part of her bhumidhari-holding out of which she also claimed to have transferred rights in an extent of 3500 bighas of undivided holding in favour of the other private respondents claimants." There were three sets of appeals. This Court proceeded to notice the entire case law. Paragraph 25 and 26 of the said judgment is extracted hereinbelow:

> "25. .....The claim of each one was in respect of his distinct, definite and separate share and their respective rights are not interdependant but independent. Among themselves there is no conflicting or overlapping interest and the grant of relief to one has no adverse impact on the other(s). The mere fact that there was no division by metes and bounds on state of ground is no reason to treat it to be a joint right-indivisible in nature to be asserted or vindicated only by all of them joining together in the same proceedings, in one capacity or the other. As a matter of fact, separate claims seem to have been filed by them before the Reference Court in respect of their own respective share. Even if they have engaged a common counsel or even if they have filed one claim in respect of their specified separate share, it could not have the effect of altering the nature of their claim or the character of their right so as to make it an indivisible joint right. Though the Reference Court has decided all such claims together, having regard to the similarity or identical nature of issues arising for consideration of the claims, in substance and reality the proceedings must be considered in law to be of multifarious claims disposed of in a consolidated manner resulting in as many number of awards of the Reference Court as there were claimants before it. There was no community of interest between them and that each one of them in vindicating their individual rights was not obliged to implead the other claimants of their shares in one common action/proceeding and the orders/judgment though passed in a consolidated manner, in law, amounts to as many orders or judgments as there were claimants and, by no reason, can it be branded to be a joint and inseverable one. Similarity of the claims cannot be a justification in law to treat them as a single and indivisible claim for any or all purposes and such a thing cannot be legitimately done without sacrificing the substance to the form. The claim on behalf of the respondents that the compensation awarded is of a lump sum, though shares are divided, is belied by the scheme underlying Sections 11, 18, 30 and 31 of the Act, and cannot be countenanced as of any merit. Against the Award of the Reference Court in this case, it was possible and permissible in law for every one of the appellants to file an appeal of his own separately in respect of his share without any need or obligation to implead every

other of the claimants like him, as party-respondent or as co-appellant, because there is no conflicting interest or claims amongst them inter se. As such, the alleged and apprehended fear about possible inconsistent or conflicting decrees resulting therefrom if the appeals are proceeded with and disposed of on merits has no basis in law nor is well founded on the facts and circumstances of these cases. Even if the appellants succeed on merits, dehors the fate of the deceased appellants the decree passed cannot either be said to become ineffective or rendered incapable of successful execution. To surmise even then a contradictory decree coming into existence, is neither logical nor reasonable nor acceptable by courts of Law. Otherwise, it would amount to applying the principle of vicarious liability to penalize someone for no fault of his and denial of one's own right for the mere default or refusal of the other(s) to join or contest likewise before the court. The fact that at a given point of time all of them joined in one proceedings because one court in the hierarchy has chosen to club or combine all their individual and separate claims for the purpose of consideration on account of the similarity of the nature of their claims or that for the sake of convenience they joined together for asserting their respective, distinct and independent claims or rights is no ground to destroy their individual right to seek remedies in respect of their respective claims. In cases of this nature, there is every possibility of one or the other among them subsequently reconciling themselves to their fate and settle with their opponents or become averse to pursue the legal battle forever so many reasons, as in the case on hand due to disinterestedness, indifference or lethargy and, therefore, the attitude, approach and resolve of one or the other should not become a disabling or disqualifying factor for others to vindicate their own individual rights without getting eclipsed or marred by the action or inaction of the others....." "26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the Khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in jamabandi itself of the shares of each of them distinctly....." Thus, the Court highlighted the need to apply laws of procedure in a manner so that substantial justice is facilitated. The Court further held as follows:

"30. The question, therefore, as to when a proceeding before the Court becomes or is rendered impossible or possible to be proceeded with, after it had partially abated on account of the death of one or the other party on either side has been always considered to depend upon the fact as to whether the decree obtained is a joint decree or a severable one and that in case of a joint and inseverable decree if the appeal abated against one or the other, the same cannot be proceeded with further for or against the remaining parties as well. If otherwise, the decree is a joint and several or separable one, being in substance and reality a combination of many decrees, there can be no impediment for the proceedings being proceeded with among or against those remaining parties other than the deceased. As observed in Nathu Ram case (supra) itself, the Code does not itself provide for the abatement of the appeal against the other respondents even where, as against one such it has abated but it is only the courts which have held that in certain circumstances the appeal also would abate against a co-respondent as a result of abatement against the deceased respondent. The same would be the position of an appeal vis-a-vis the appellants, as in the other cases. Order 22 Rule 4 also was considered not to provide for abatement of the appeal(s) against the co-respondents of the deceased respondent and it was specifically observed therein that to say that the appeals against them also abated in certain circumstances is not a correct statement. It was held that the appeals against such other respondents cannot be proceeded against and, therefore, had to be dismissed, in certain circumstances." (Emphasis Supplied) "34. In the light of the above discussion, we hold: -

(1) Wherever the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The same would be the position in the case of defendants or respondents having similar rights contesting the claims against them. (2) Whenever different and distinct claims of more than one are sought to be vindicated in one single proceedings, as the one now before us, under the Land Acquisition Act or in similar nature of proceedings and/or claims in assertion of individual rights of parties are clubbed, consolidated and dealt with together by the courts concerned and a single judgment or decree has been passed, it should be treated as a mere combination of several decrees in favour of or against one or more of the parties and not as joint and inseparable decrees.

(3) The mere fact that the claims or rights asserted or sought to be vindicated by more than one are similar or identical in nature or by joining together of more than one of such claimants of a particular nature, by itself would not be sufficient in law to treat them as joint claims, so as to render the judgment or decree passed thereon a joint and inseverable one. (4) The question as to whether in a given case the decree is joint and inseverable or joint and severable or separable has to be decided, for the

purposes of abatement or dismissal of the entire appeal as not being properly and duly constituted or rendered incompetent for being further proceeded with, requires to be determined only with reference to the fact as to whether the judgment/decree passed in the proceedings vis-a-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that reason, a decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other." (Emphasis Supplied)

17. Is this a case when the appellant and his brother were having distinct and independent claims and rights and for the sake of convenience they had joined as plaintiffs originally in the suit and as appellants subsequently in the appeal? Is this a case where there is joint decree or is it is a case where the decree is severable? Is it therefore a severable decree or a combination of two decrees?

Whether the decree if passed by the appellate court in favour of the appellant would result in a decree which is contradictory to the decree passed by the trial Court.

18. In this case, undoubtedly as we have noted the appellant and his late brother sued as plaintiffs for a declaration that the first defendant was not the adopted son and he has no rights. They also sought a prohibitory injunction. The suit stood dismissed by trial court. Let us take the converse position. Assuming that the suit was decreed by the trial court and appeal was carried by the defendants, and pending the appeal by the defendants, if the late brother of the appellant had died and if the defendants had not impleaded the legal representatives of late brother and the appeal abated as against him, would it then not open to the appellant as respondent in the appeal to contend that if the appeal was to be allowed to proceed in the absence of the legal representatives of his late brother and succeed, there would be an inconsistent decree. On the one hand, there will be a decree by the trial Court declaring that the first defendant was not the adopted son and had no interest in the property qua the late brother of the appellant. On the other hand, the appellate court could be invited to pass a decree which should be to the effect that the first defendant was found to be the adopted son and had right and interest over the property and a declaration to that effect would have to be granted. Would not the appellate court then have to necessarily hold though the decree in favour of the deceased brother of the appellant has become final, and under it, a declaration is granted that the defendant No.1 is not the adopted son and he has no right to claim the property and there is an injunction against him that he is the adopted son opposed to the decree which has been passed by the trial court which has attained finality. We would think that the appellate court would indeed have to refuse to proceed with the appeal on the basis that allowing the appeal by the defendants would lead to an appellate decree which is inconsistent with the decree which has become final as against the deceased brother of the appellant.

19. We would think that the situation cannot be any other different, when we contemplate the converse of the aforesaid scenario which happens to be the factual matrix obtaining in this case. The right which was set up by the appellant alongwith his late brother was joint. They were members of

the joint Hindu family consisting of their late father and which consisted of late Govindareddi, their father Shriram Reddy and Basavareddi, who was none other than the husband of the second defendant. This is not a case where their claims were distinct claims. This is not the situation which was present in the case dealt with by the Constitution Bench under the land acquisition case. Therein, several persons came together and sought relief in one proceeding. We would think that this is not the position in this case.

20. It may be true that if a separate suit had been filed by the late brother and it had abated on his death, there will be no decree on merits and the suit would have abated. No doubt, it could be argued that even though the appellant and his late brother set up the case of joint right, it would only mean that they are co-owners of the property, and therefore, they had independent rights as co-owners which could be canvassed in two different proceedings, and therefore, the decree of the trial court dismissing the suit be treated as two different decrees - one decree against the appellant and the other against his late brother. Even then, the decree, which the High court would be invited to pass, would be contradictory and inconsistent with the decree as against late brother of the appellant which may not be permissible in law.

21. The decree, which the appellant, if successful in the appeal, would obtain, would be absolutely contrary to the decree which has also attained finality between his late brother and the defendants. They are mutually irreconcilable, totally inconsistent. Laying one side by side, the only impression would be that one is in the teeth of the other. In one, the suit is dismissed whereas in the other, the suit would have been decreed.

22. The argument that in view of the order passed on 10/09/2001 by which despite the death of late brother of the appellant, permission to prosecute the appeal was granted by the court there would arise an estoppel against the order being passed holding that the appeal has abated as a whole, cannot be accepted. The impact of death of the late brother of the appellant qua the proceeding is one arising out of the incompatibility of a decree which has become final with the decree which the appellant invites the appellate court to pass. In such circumstances, the mere fact that the appellant was permitted to prosecute the appeal by an interlocutory order would not be sufficient to tide over the legal obstacle posed by the inconsistent decree which emerges as a result of the failure to substitute legal representative of the late brother and the abating of the appeal filed by his late brother. Consequently, we see no merit in the appeal. It is accordingly dismissed.

.....J. (Ashok Bhushan) .....J. (K.M. Joseph) New Delhi;

May 07, 2019