

Swami Vedvyasanand Ji Maharaj (D) Thr LRs

v.

Shyam Lal Chauhan & Ors.

(Civil Appeal No. 5569-5570 of 2024)

30 April 2024

[A.S. Bopanna and Sudhanshu Dhulia, JJ.]

Issue for Consideration

Whether the High Court, while substituting Respondent No.6 as the appellant in the Second Appeal, has followed the correct procedure prescribed under Order XXII Rule 5 of the Code of Civil Procedure.

Headnotes

Code of Civil Procedure – Order XXII Rule 5 – Significance of substitution – Substitution gives the right to the substituted legal representatives to contest the claim of the deceased.

Held: The only purpose of substitution is the continuation of the case – The substitution as LR in a case by itself will not give any title in favour of the person so substituted – It only confers the right to represent the estate of the deceased in the pending proceedings – Despite the limited purpose of substitution of legal representatives, it has its significance in as much as it gives the right to the substituted legal representatives to contest the claim of the deceased. [Paras 10 & 11]

Code of Civil Procedure – Order XXII Rule 5 – Explained

Order XXII Rule 5 CPC mandates that in case of death of plaintiff or defendant, if a question arises as to whether any person is or is not the legal representative of the deceased party, the court shall first determine such a question – Proviso of this Rule is only an enabling provision where the appellate court may before deciding the question refer the matter to a subordinate court to try and record its findings which may be considered by the Appellate Court while taking a final call on the issue. [Para 14]

Code of Civil Procedure – Order XXII Rule 5 – Proviso cannot be construed as delegation of the powers of the Appellate Court to substitute the deceased party, but is merely to assist it in ultimately deciding the issue of substitution

Held: While dealing with the report sent by the subordinate court under Order XXII Rule 5 CPC, the Appellate Court may consider the

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findings of the subordinate court and then give its reasons before reaching any conclusion – The proviso to Rule 5 gives discretion to the Appellate Court to make its own separate opinion notwithstanding the opinion of the subordinate court – The proviso cannot be construed to be a delegation of the powers of the Appellate Court to substitute the deceased party, but is merely to assist it in ultimately deciding the issue of substitution – Thus, the Appellate Court ‘may’ take into consideration the material referred by the subordinate court under Rule 5 of Order 22, CPC along with the objections, if any, against the report while deciding on the substitution of the appellant. [Para 17]

Code of Civil Procedure – Order XXII Rule 5 – Correct procedure not followed by the Appellate Court as it failed to consider the evidence in support of the Respondent No.6 and the objections against the Trial Court report while making its determination on substitution.

Held: The High Court, being the Appellate Court, while substituting Respondent No.6 as the appellant in the Second Appeal did not follow the correct procedure – The High Court has misread Rule 5, as well as the previous order of the Supreme Court, as it failed to consider the objections against the Trial Court report while making its determination on substitution – The High Court did not discuss the evidence in support of the claim of the Respondent No. 6 nor did it consider the objections of the other party on such claims. [Paras 13, 15-16]

Case Law Cited

Jaladi Suguna v. Satya Sai Central Trust [\[2008\] 7 SCR 734](#) : (2008) 8 SCC 521 – referred on.

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Substitution application; Legal Representatives; Significance of substitution; Appellate Court; Discretion.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5569-5570 of 2024

From the Judgment and Order dated 19.06.2019 of the High Court of Judicature at Patna in IA Nos. 7 and 8 of 2019 in S.A. No. 169 of 1993

Digital Supreme Court Reports**Appearances for Parties**

Shyam Divan, Sr. Adv., Sabarish Subramanian, Vishnu Unnikrishnan, C Kranthi Kumar, Naman Dwivedi, Danish Saifi, Advs. for the Appellants.

Krishnan Venugopal, Sr. Adv., Vijay K. Jain, Rohit K. Singh, Pritam Bishwas, Avinash Mathews, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Order**

Leave granted.

2. The present appeals arise out of an order in a pending Second Appeal before the High Court of Judicature at Patna. The necessary facts for our consideration are as follows:
 3. Respondent Nos.1 to 4 were plaintiffs in a civil suit where Swami Shivdharmanand Ji Maharaj @ Deo Shankar Tiwary (hereinafter referred to as 'Swami Shivdharmanand') was one of the defendants. It was a title suit seeking declaration regarding the suit property which is situated in Bihar. The suit was dismissed by the Trial Court on 26.03.1991. The First Appellate Court allowed the appeal and decreed the suit. Consequently, the defendant Swami Shivdharmanand filed a second appeal, which is still pending before the Patna High Court.

Meanwhile the defendant, who had filed the second appeal passed away on 20th March, 1999. There were two claimants, or successors of the "Gaddi" of Swami Shivdharmanand, who sought substitution in place of Swami Shivdharmanand in the Second Appeal. These were (a) Swami Triyoganand Ji Maharaj @ Ram Narayan Bind (hereinafter referred to as 'Swami Triyoganand') and (b) Swami Satyanand Ji Maharaj @ Ramjee Singh (hereinafter referred to as 'Swami Satyanand') who is respondent no.6 in the present appeal.

4. Initially, Patna High Court directed the Trial Court to conduct an enquiry in the matter as laid down under Rule 5 of Order 22 of Civil Procedure Code, for the purpose of substitution. The Trial Court did its enquiry and submitted the report before the Patna High Court, where the findings were that Swami Satyanand (i.e., present respondent No.6) is the Legal Representative (hereinafter referred to as 'LR') of Swami Shivdharmanand and is liable to be substituted as the

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appellant before the High Court. Objections were filed to the said report by the other party, which is the predecessor-in-interest of the appellant before this Court. The Patna High Court instead of giving a decision based on the report and the objections, passed an order on 24.02.2009, allowing both the parties (Swami Satyanand and Swami Triyoganand) to be substituted as LRs to Swami Shivdharmanand. This order of the Patna High Court came to be challenged by both the parties (i.e., Swami Triyoganand as well as Swami Satyanand), before this Court. This court vide order dated 08.02.2018 had set aside the order of the High Court and remanded the matter to Patna High Court, with directions to consider the report of the Trial Court as well as the 'objections of parties' and then to substitute one of the two parties as appellant, thereby holding that only one of the two claimants should be substituted as appellant/defendant.

5. Consequently, the High Court passed an order dated 30.01.2019 wherein it upheld the findings of the Trial Court on the legal representation and came to the conclusion that Swami Satyanand is the LR of Swami Shivdharmanand. Thus, Swami Satyanand was ordered to be substituted as the appellant in the pending Second Appeal.
6. Now the fact of the matter is that when this order was passed by the High Court on 30.01.2019, Swami Triyoganand too passed away on 04.12.2018 and an adjournment was also sought to bring the LR of Swami Triyoganand on record, but the substitution could not be done. The Patna High Court went ahead and passed the order in favour of Swami Satyanand on the ground that the Trial Court in its report has found Swami Satyanand to be the LR of the appellant-Swami Shivdharmanand, and it is therefore needless to adjourn the matter any further.
7. Subsequently, the appellant before us, i.e., Swami Vedvyasanand Ji Maharaj (hereinafter referred to as Swami Vedvyasanand) moved two applications before the Patna High Court on 22.02.2019. The first was to substitute himself in place of Swami Triyoganand, while the second was to recall the order dated 30.01.2019. Both these applications i.e., IA Nos.7 and 8 of 2019 were taken up and dismissed vide the impugned order on 19.06.2019.
8. In doing so, the reasons given by the High Court are that Trial Court had conducted an enquiry and concluded that the LR of deceased Swami Shivdharmanand is Swami Satyanand. This report was

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accepted by the High Court and consequently, Swami Satyanand was substituted and the claim of Swami Triyoganand was dismissed. Since the claim of the deceased appellant-Swami Vedvyasanand is based only on the claim of Swami Triyoganand, the High Court perhaps did not find it appropriate or necessary to even consider his substitution application and therefore rejected the substitution application along with the recall application. Aggrieved by the same, Swami Vedvyasanand had filed the present appeal.

We must further note here that the matter as it stands today is that even Swami Vedvyasanand has passed away and now Sadhavi Sarojanand, who claims to be the legal heir of Swami Vedvyasanand, is seeking substitution as appellant in the pending second appeal before the High Court.

9. We have heard learned senior Counsel for both the parties at length and have perused the material on record.
10. The only purpose of substitution is the continuation of the case. The substitution as LR in a case by itself will not give any title in favour of the person so substituted. It only confers the right to represent the estate of the deceased in the pending proceedings. In Jaladi Suguna v. Satya Sai Central Trust, (2008) 8 SCC 521 this limited right was explained as follows:

"15. Filing an application to bring the legal representatives on record, does not amount to bringing the legal representatives on record. When an LR application is filed, the court should consider it and decide whether the persons named therein as the legal representatives, should be brought on record to represent the estate of the deceased. Until such decision by the court, the persons claiming to be the legal representatives have no right to represent the estate of the deceased, nor prosecute or defend the case. If there is a dispute as to who is the legal representative, a decision should be rendered on such dispute. Only when the question of legal representative is determined by the court and such legal representative is brought on record, can it be said that the estate of the deceased is represented. The determination as to who is the legal representative under Order 22 Rule 5 will of course be for the limited purpose of representation"

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of the estate of the deceased, for adjudication of that case. Such determination for such limited purpose will not confer on the person held to be the legal representative, any right to the property which is the subject-matter of the suit, vis-à-vis other rival claimants to the estate of the deceased.”

11. Despite the limited purpose of substitution of legal representatives, it has its significance in as much as it gives the right to the substituted legal representatives to contest the claim of the deceased.
12. In the present case, when parties had come before this Court earlier, this Court vide order dated 08.02.2018 had remitted the matter to the High Court to decide the question of legal representatives by taking the report of the Trial Court and the objections into consideration, after hearing both the sides. After the order of this Court, the High Court vide order dated 30.01.2019 had upheld the findings of the Trial Court by concluding that Swami Satyanand is the disciple of Swami Shivdharmanand, while rejecting the claims of the Swami Triyoganand including the appellant, who claimed their right through the deceased Swami Triyoganand. Further, the application to recall the order dated 30.01.2019 moved by the appellant was dismissed vide impugned order on the ground that the appellant claimed himself to be the disciple of Swami Triyoganand and the High Court has already decided to reject the claim of Swami Triyoganand. The High Court ignored the fact that the order dated 30.01.2019 was passed after the death of Swami Triyoganand and without considering the pending substitution application.
13. In our opinion, the High Court while substituting Swami Satyanand (Respondent No.6) as the appellant and dismissing the claim of appellant's predecessor-in-interest i.e., Swami Triyoganand did not follow the correct procedure.

We are not commenting on the merits of the High Court finding on Swami Satyanand being the rightful representative in the case, we are only on the procedure followed by the High Court while doing so.

14. Order 22 Rule 5 of CPC reads as follows:

“Determination of question as to legal representative.

— Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or

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a deceased defendant, such question shall be determined by the Court:

Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.”

This Rule mandates that in case of death of plaintiff or defendant, if a question arises as to whether any person is or is not the legal representative of the deceased party, the court shall first determine such a question. Proviso of this Rule is only an enabling provision where the appellate court may before deciding the question can refer the matter to a subordinate court to try and record its findings which may be considered by the Appellate Court while taking a final call on the issue.

15. In the case at hand, the High Court had earlier fallen into error by substituting both the claimants as legal representatives of the deceased defendant for the purpose of hearing the appeal and thus, the matter was remanded by this Court vide Order dated 08.02.2018. We are afraid that the High Court has again misread Rule 5 as well as our order, as it failed to consider the objections against the Trial Court report while making its determination on substitution.
16. In the order dated 30.01.2019, the High Court interprets this Court's order as if a request was made to substitute the one who is found to be the legal representative in the enquiry:

“From perusal of the order of the Hon’ble Supreme Court, it appears that the Hon’ble Supreme Court has held that the person who is found to be the legal representative of the deceased-appellant in an enquiry held under Order 22 Rule 5 should be substituted.....”

The High Court did not discuss the evidence in support of the claim of the Respondent No. 6 nor did it consider the objections of the other party on such claims. Moreover, there was already another substitution application pending before the Court which was not considered.

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17. Proviso to Rule 5 does not say that the Appellate Court can direct the subordinate court to decide the question as to who would be the legal representative, it only provides that the Appellate Court can direct the subordinate court to try the question and return the records to the Appellate Court, along with the evidence and the subordinate court has then to send a report in the form of a reasoned opinion based on evidence recorded, upon which the final decision has to be made ultimately by the Appellate Court, after considering all relevant material. While dealing with the report sent by the subordinate court under Order 22 Rule 5 of CPC, the Appellate Court may consider the findings of the subordinate court and then give its reasons before reaching any conclusion. The words '*the Appellate Court may take the same into consideration in determining the question*' used in the proviso to Rule 5 gives discretion to the Appellate Court to make its own separate opinion notwithstanding the opinion of the subordinate court. The proviso cannot be construed to be a delegation of the powers of the Appellate Court to substitute the deceased party, but is merely to assist it in ultimately deciding the issue of substitution. Thus, the Appellate Court 'may' take into consideration the material referred by the subordinate court under Rule 5 of Order 22, CPC along with the objections, if any, against the report while deciding on the substitution of the appellant.
18. We, therefore, set aside the order dated 19.06.2019 and 30.01.2019, and remit the matter back to the High Court for a fresh decision on substitution.

We reiterate that we have said nothing on the merit of the relative claims of the contenders, our concern and our reasons for yet again sending the matter back were only on the procedure.

19. Accordingly, these appeals stand disposed of along with the pending application(s), if any.

Headnotes prepared by:
Mukund P Unny, Hon'y. Associate Editor
(Verified by: Liz Mathew, Sr. Adv.)

Result of the case:
Appeals disposed of.