

Regular Civil Appeal No. 42 OF 2007

Order Below Exh.-13

1. The Ld. Advocate for the appellant has submitted that respondent No. 2 Gitaben has expired and therefore her legal heirs are required to be joined in appeal otherwise it will be no use to proceed further in appeal and if the legal heirs are joined then the opponent has no any problem because their right will not be prejudiced and therefore prayed to allow the application of the appellant.

2. The proposed heirs of late respondent No. 2 Gitaben have appeared through their Ld. Advocate and their Ld. Advocate have filed reply vide Exh. 24 and has also argued that the Ld. Advocate has already declared on 26/09/2008 by bringing purshish vide Exh.-11 that opponent No. 2 Gitaben has expired on 15/08/2008 and her death certificate was also produced. The present application has been given on 11/01/2013 and therefore, 90 days have already passed since the date of declaring death of respondent No. 2 Gitaben and therefore, the appeal of the appellant so far as respondent No. 2 is concerned automatically gets abated and the appellant has not submitted any application to set aside an abatement and therefore, the application of the appellant deserves to be dismissed.

3. It is on record that the Ld. Advocate for the respondent has passed a purshish vide Exh.-11 and declared that the respondent No. 2 Gitaben has expired on 15/08/2008 and her death certificate was also produced. Therefore, appellant ought to have submitted an application to bring on record the LR of respondent No. 2 within 90

days of 15/08/2008 i.e. up to 15/11/2008. But present application has been given on 11/01/2013 i.e. after lapse of almost five years. Therefore, Order 22, Rule 4 of C.P.C. the suit or appeal of the appellant automatically gets abated.

4. Ld. Advocate for the proposed heirs of respondent No. 2 has relied on **Union of India Vs. Ram Charan (deceased) through L.R. reported in AIR 1964 Supreme Court 215**. In that the Hon'ble Supreme Court has very categorically held that "The Court is not to invoke its inherent powers under section 151, C.P.C. for the purposes of impleading the legal representatives of a deceased respondent, if the suit had abated on account of the appellant not taking appropriate steps within time to bring the legal representatives of the deceased party on the record and when its application for setting aside the abatement is not allowed on account of its failure to satisfy the Court that there was sufficient cause for not impleading the legal representatives of the deceased in time and for not applying for the setting aside of the abatement within time." It was also held that "However, an application is necessary to be made for the purpose. If no such application is made within the time allowed by law, the suit abates so far as the deceased plaintiff is concerned or as against the deceased defendant. The effect of such an abatement on the suit of the surviving plaintiffs or the suit against the surviving defendants defendants on other consideration."

Therefore, this judgment is helpful to the proposed heirs of late respondent No. 2. Because, in the present case also, though the application has been submitted after lapse of five years from the date of declaration of death of respondent No. 2.

5. He has also relied the case of **Makvana Udaji Jehaji & Ors. Vs. Makvana Parthiji Punjaji & Ors. Reported in 2012(3) GLR 2354**. In this case, the Hon'ble Gujarat High Court has held that “where application for bringing on record heirs / L.R.s. of deceased-plaintiff is made beyond limitation period (90 days) same not maintainable without first getting abatement of suit set aside and delay condoned.” This judgment is also very much helpful to the case of proposed heirs of late respondent No. 2. Therefore, the application of the appellant deserves to be dismissed. Therefore, I pass the following final order.

FINAL ORDER

The application filed by the appellant is hereby dismissed.

Pronounced and signed in the open court today on 20th February in the year of 2018.

Place: Bharuch
Date: 20/02/2018

(Hemantkumar Arvindray Dave)
Additional District Judge
Bharuch
Code GJ00385