

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

I.A.Nos.1, 2 & 3 OF 2025
IN
APPEAL SUIT NO.1 OF 2001

COMMON ORDER:

These applications are filed by the petitioners/appellants/plaintiffs under Section 5 of the Limitation Act, under Order XXII Rule 9 and under Order XXII Rule 4 of the Civil Procedure Code, seeking to condone the delay of 635 days in filing the application to bring on record the legal representatives of the 12th respondent; to set aside the abatement caused due to the death of 12th respondent and to bring on record the proposed respondent/71st respondent as the legal representative of the deceased 12th respondent respectively in the above appeal.

2. The case of the petitioners/appellants herein as follows:

A.S.No.1 of 2001 is filed against the judgment and decree, dated 30.10.2000 in O.S.No.251 of 1984 on the file of the Senior Civil Judge at Vijayawada. The 12th respondent/ Nutulapati Vijaya Lakshmi in the above appeal passed away in the month of January, 2023 leaving behind her son, Ravi Sai Ram as her only legal representative. The above appeal cannot be decided in the absence of the proposed respondent as he is a proper and necessary party. The petitioners are not aware of the death of the 12th respondent till today. It is only recently on 10.01.2025 when the petitioner went to Hyderabad for the purpose of Visa to the United States of America, the relatives informed that 12th respondent passed away, but did not give any particulars. Therefore, the petitioners made enquiries and learnt that 12th respondent passed away on 01.01.2023 leaving behind the proposed respondent as the only legal representative. Needless to say that the petitioners were not looked after by the joint family at any point of time. After the death of the petitioner's father N. Samba Siva Rao, the petitioners were brought up with the support of matrimonial grandfather, B. Dasradaramaiah.

The relations between the family are strained and there are no visits or communications between the family members. The counsel for the 12th respondent did not furnish the details of the death or that of the legal heirs.

3. The 7th respondent filed counter-affidavit. The brief averments in the counter-affidavit are as follows:

Aggrieved by the decree and judgment, dated 30.10.2000 delivered in O.S.No.251 of 1985 by the learned I Additional Senior Civil Judge, Vijayawada, the appellants filed the appeal suit. The suit in O.S.No.251 of 1984 is filed against nine defendants. Late Nutalapati Ranga Rao is shown as the 3rd defendant. The 7th respondent and 7th defendant have filed a common written statement contending inter alia after 23.05.1972 there was no joint family in existence in fact all the members were living separately and having separate mess. Pending the appeal suit, late Nutalapati Ranga Rao/3rd respondent died, his LRs were brought on record as respondent Nos.10 to 13 to represent his estate. He further contended that after bringing the respondent Nos.10 to 12 in the appeal, they have not taken any different stand and they continued as the LRs of the deceased by engaging an Advocate. The deceased 12th respondent has adopted the stand of the deceased 3rd defendant. The estate of the deceased Ranga Rao is being represented by the respondent Nos.10, 11 and 13. The 12th respondent is only one of the legal representatives of the deceased 3rd respondent. As the estate left by the deceased 3rd respondent is being sufficiently represented, death of the 12th respondent would not abate the appeal suit as the remaining respondents would sufficiently represent her estate. Having got knowledge about these facts, the appellants filed the affidavit dated 20.02.2025 to procrastinate the proceedings unendingly though the appeal suit is posted for judgment and adjourned for filing the written arguments.

4. Heard Sri M.R.K. Chakravarthy, learned counsel for the petitioners and heard Sri V.S.R. Anjaneyulu, learned Senior Counsel appearing for the respondents.

5. The undisputed facts are the appeal suit in A.S.No.1 of 2001 is filed against the judgment and decree, dated 30.10.2000 in O.S.No.251 of 1984 on the file of the I Additional Senior Civil Judge at Vijayawada and the petitioners filed the present appeal aggrieved against the said decree and judgment passed by the trial Court in O.S.No.251 of 1984. The petitioners further pleaded that the 12th respondent/Nutulapati Vijaya Lakshmi in the appeal passed away in the month of January, 2023 leaving behind her son, Ravi Sai Ram as her only legal representative and that the above appeal cannot be decided in the absence of the proposed respondent as he is a proper and necessary party. The petitioners further pleaded that they are not aware of the death of the 12th respondent till today and they came to know about the death of 12th respondent on 10.01.2025 and when the petitioner herein went to Hyderabad for the purpose of Visa to the United States of America, his relatives informed about the death of 12th respondent. The death of 12th respondent during the pendency of the present appeal proceedings in the month of January, 2023 is not at all disputed by the respondents on record. It is also undisputed by the respondents that the 12th respondent died by leaving his son proposed respondent/71st respondent as her sole legal representative. When this Court inclined to order notice to the proposed respondent, Sri V.S.R. Anjaneyulu, learned Senior Counsel on behalf of the respondents on record raised an objection that the appeal would not abate after the death of 12th respondent as the estate being represented effectively. He would further contend that the defendants 1 and 2 adopted the statement of 3rd defendant, the 3rd defendant died and LRs of 3rd defendant are on record as respondent Nos.1 to 13 that the present petition may be dismissed and there is no need to issue notice to proposed respondent/71st respondent.

6. The learned counsel for the respondents placed a reliance of **Mahabir Prasad vs. Jage Ram and others**¹, wherein the Apex Court held as follows:

“Even on the alternative ground that Mahabir Prasad being one of the heirs of Saroj, Devi there can be no abatement merely because no formal application for showing Mahabir Prasad as an heir and legal representative of Saroj Devi was made. Where in a proceeding a party dies and one of the legal representatives is already on the record in another capacity, it is only necessary that he should be described by an appropriate application made in that behalf that he 'is also on the record, as an heir and legal representative. Even if there are other heirs and legal representatives and no application for impleading them is made within the period of limitation prescribed by the Limitation Act the proceeding Will not abate. On that ground also the order passed by the High Court cannot be, sustained.”

In the case on hand, the LRs of the 12th respondent are not on record and the present suit is a title suit which is filed for declaratory relief for seeking declaration that the relinquishment deed, dated 23.05.1972 is a nominal and sham. After conclusion of full trial, the said suit was dismissed by the trial Court, the plaintiffs filed the first appeal before this Court.

7. Learned counsel for the petitioners/appellants placed another reliance of **Government of Andhra Pradesh through Principal Secretary and others v. Pratap Karan and others**², wherein the Apex Court held as follows:

“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 the

¹ AIR 1971 Supreme Court 742

² 2016(4) ALD 2 (SC)

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.”

In the aforesaid case law, the Apex Court further held as follows:

“The plaintiffs succeeded the estate as sharers being the sons of Khatadar. Indisputably, therefore, all the plaintiffs had equal shares in the suit property left by their predecessors. Hence, in the event of death of any of the plaintiffs, the estate is fully and substantially represented by the other sharers as owners of the suit property. We are, therefore, of the view that by reason of non-substitution of the legal representative(s) of the deceased plaintiffs, who died during the pendency of the appeal in the High Court, entire appeal shall not stand abated. Remaining sharers, having definite shares in the estate of the deceased, shall be entitled to proceed with the appeal without the appeal having been abated.”

In the case on hand, the minors instituted a title suit before the trial Court represented by maternal grandfather for seeking relief of declaration

that the relinquishment deed, dated 23.05.1972 is null and void and also sham and nominal document. In the present case, the 3rd defendant died, his Legal Representatives are already on record. The 12th respondent died by leaving proposed respondent/71st respondent.

8. It was contended by the petitioners that the death of 12th respondent was not intimated by the counsel for the respondents to the petitioners and the plaintiffs herein are minors by the date of institution of the suit and they are not having cordial terms with the respondents and that they are not having any knowledge about the death of 12th respondent.

9. Section 2 (11) of Code of Civil Procedure defines a "legal representative" as a person who, in law represents the estate of a deceased person including everyone who intermeddles with the estate or on whom the estate devolves upon a death of the party suing or being sued. In the case on hand, all the plaintiffs are minors by the date of institution of the suit and the minors represented by their maternal grandfather instituted a suit for seeking relief of declaration that the relinquishment deed, dated 23.05.1972 is a nominal and sham.

10. In a case of **Om Prakash Gupta alias Lalloowa (now deceased) and others vs. Satish Chandra (now deceased)**³, the Apex Court held as follows:

"Rule 10-A casts a duty upon a pleader appearing for a party to the suit to intimate the court about the death of such party. It further provides that once the court is informed by the pleader of a party that he is no more, the court "shall" notify the opposing party of the death. A straightforward interpretation of this rule would suggest that the court's obligation to issue notice to the other party is indeed mandatory. Nonetheless, this obligation may not arise in all

³ Civil Suit No.13407 of 2024

circumstances. One notable exception could be when the information regarding the party's death is conveyed to the court in the presence of the opposing party's pleader or is documented by the court in the order sheet. In such cases, if the pleader of the concerned party (and consequently the party itself) has already been notified, issuing a further notice from the court would not serve any substantial purpose other than being an exercise by way of abundant caution. Therefore, in the aforementioned scenario, the absence of a notice from the court would not imply a failure to comply with Rule 10A, suggesting that it is not "always mandatory".

In the case on hand, it is undisputed by both the parties that 12th respondent died by leaving the proposed respondent/71st respondent and the same is not in disputed. The contention of the petitioners is that the counsel for the respondents not intimated the fact of the death of 12th respondent which was happened in the year 2023 and the 12th respondent died on 01.01.2023 leaving behind the proposed respondent/71st respondent and the petitioners were brought up by the maternal grandfather and the relationship between both the families are strained and there are no visiting terms in between both the parties. By the date of filing of suit, all the plaintiffs are minors represented by their maternal grandfather as guardian.

11. A Full Bench judgment of the Apex Court in a case of **Daya Ram and others vs. Shyam Sundari and others**⁴, held as follows:

"In a case where the person brought on record is a legal representative we consider that it would be consonant with justice and principle that in the absence of fraud or collusion the bringing. on record of such a legal representative is sufficient to prevent the suit or the appeal from abating. We have not been referred to any principle of construction of Order 22, Rule 4 or of the law which would militate

⁴ 1964 SCC OnLine SC 153

against this view. This view of the law was approved and followed by Sulaiman, Acting C.J. in *Muhammiad Zafaryab Khan v. Abdul Razzaq Khan*(4). A similar view of the law has been taken in *Bombay-See Jehrabi Sadullakhan Mokasi v. Bismillabi Sadruddin Kaji* (5) - as also in Patna-See *Lilo Sonar v. Jhagru Sahu* (6) as and *Shib Dutta Singh v. Sheikh Karim Bakhas* (7) as well as in Nagpur - *Abdul Baki v. R. D. Bansilal Abirchand Firm, Nagpur* (8). The Lahore High Court has also accepted the same view of the law - See *Umrao Begum v. Rehmat Ilahi* (9). We are, therefore, clearly of the opinion that the appeal has not abated.

The next question is about the effect of the appellant having omitted to include two of the heirs of Shyam Sundari, a son and a daughter who admittedly had an interest in the property, and the effect of this matter being brought to the notice of the Court before the hearing of the appeal. The decisions to which we have referred as well as certain others have laid down, and we consider this also, correct, that though the appeal has not abated, when once it is brought to the notice of the Court hearing the appeal that some of the legal representatives of the deceased respondent have not been brought on record, and the appellant is thus made aware of this default on his part, it would be his duty to bring these others on record, so that the appeal could be properly constituted.”

In a case of **Delhi Development Authority vs. Diwan Chand Anand and others**⁵, the Apex Court held as follows:

“After referring to the decision of this Court in the case of Nathu Ram (supra), in the case of *Vennigalla Koteswaramma vs. Malampati Suryamba and Others*, MANU/SC/1214/2022 : (2003) 3 SCC 272, it is observed by this Court that the nature and extent of the abatement in a given case and the decision to be taken thereon will depend upon the

⁵ (2022) 10 SCC 428

facts of each case and, therefore, no exhaustive statement can be made either way and that the decision will ultimately depend upon the fact whether the decree obtained was a joint decree or a separate one. It is further observed that this question cannot and should not also be tested merely on the format of the decree under challenge or it being one or the manner in which it was dealt with before or by the Court which passed it.

Thus, as observed and held by the Court:

(i) The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives;

(ii) If there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants (Order 22 Rule 2);

(iii) 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. Where within the time limited by law no application is made under sub-rule 1 of Order 22 Rule 4, the suit shall abate as against the deceased defendant;

(iv) the provision of Order 22 shall also apply to the appeal proceedings also.

As observed and held by this Court in the aforesaid decisions while considering whether the suit/appeal has abated due to non-bringing the legal representatives of plaintiffs/defendants or not, the Court has to examine if the right to sue survives against the surviving respondents. Thereafter the Appellate Court has to consider the question whether non-bringing the legal representatives of some of the defendants, the appeal could have proceeded against the surviving respondents. Therefore, the

Appellate Court has to consider the effect of abatement of the appeal against each of the respondents in case of multiple respondents.”

12. In view of the principles laid down in the aforesaid case laws and for the aforesaid reasons, I am of the considered view that the objections raised by the respondents on record are overruled.

V. GOPALA KRISHNA RAO, J.

Dt. 08.04.2025.
PGR

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