

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4761 OF 2008

PRAMODA R.BHAT & ORS.

Appellant(s)

VERSUS

M. BALAKRISHNA RAO (D) BY. LRS.

Respondent(s)

O R D E R

Heard learned counsel for the parties.

The primary issue raised by learned counsel for the appellants is that the first appeal before the High Court could not have proceeded on merits as the same had abated as a whole due to the death of original defendant No. 2 - Mrs. Jayanthi M. Bhat on 24.12.2004 during the pendency of the first appeal.

According to the appellants, the first appeal had abated as a whole - in light of the finding of fact recorded by the Trial Court in favour of the deceased defendant No.2-Mrs. Jayanthi M. Bhat.

Learned counsel for the respondent was at pains to persuade us to take a view that the first appeal did not abate as a whole by referring to Order XXII Rule 2 read

with Rule 11 of Code of Civil Procedure. We are not impressed by this submission.

We agree with the appellants that the first appeal had abated as a whole due to death of original defendant No.2-Mrs. Jayanthi M. Bhat. Until the abatement was set aside, it would not be open to the High Court to proceed with the hearing of the first appeal.

Accordingly, this appeal succeeds and the impugned judgment and order is set aside. The R.F.A. No.292 of 2004 before the High Court stands abated.

We make it clear that reversal of the impugned judgment will not come in the way of the respondent(s) to approach the High Court for appropriate relief(s), as may be advised.

Pending applications, if any, stand disposed of.

.....J
(A.M. KHANWILKAR)

.....J
(DINESH MAHESHWARI)

New Delhi
February 12, 2020

ITEM NO.107

COURT NO.7

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4761/2008

PRAMODA R.BHAT & ORS.

Appellant(s)

VERSUS

M. BALAKRISHNA RAO (D) BY. LRS.

Respondent(s)

(listed before the Hon'ble Court
IA No. 2/2007 - APPLICATION FOR DIRECTION FILED
IA No. 51047/2019 - INTERVENTION/IMPLEADMENT)

Date : 12-02-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Appellant(s)

Mr. H. Chandra Sekhar, AOR
Mrs. Rekha Chandra Sekhar, Adv.
Mr. Karri Venkata Reddy, Adv.

For Respondent(s)

Mr. Ankur Sood, AOR

Mr. Harisha S.R., Adv.
Mr. Rajesh Mahale, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]