

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).11310/2007

(From the judgement and order dated 30/05/2007 in CWP No. 2754/2007 of the HIGH COURT OF RAJASTHAN AT JAIPUR)

SHEO PRAKASH & ANR.
VERSUS

Petitioner(s)

VISHNU & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 19/11/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE H.S. BEDI

For Petitioner(s) Mr. Ashok Mathur,Adv.

For Respondent(s) Mr. B.D. Sharma,Adv.

UPON hearing counsel the Court made the following
ORDER

The petitioners are third parties to the execution proceedings. The original plaintiff filed a suit for eviction and the same was allowed. Petitioners, who are the heirs and legal representatives of the defendant-tenant, filed an application purported to be under Order 21 Rule 97 of the Code of Civil Procedure. Indisputably, such a proceeding is treated to be a suit for all intent and purport.

The decree-holder died on 21.2.2002. His heirs and legal representatives were not brought on record in the said proceeding. The suit, therefore, abated in terms of order 22 Rule 4 of the C.P.C. Neither any application for setting aside the abatement nor any application for condonation of delay was filed.

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An application purported to be under Section 151 of C.P.C. and Order 1 Rule 10 of C.P.C. was filed for impleadment of the petitioners which, if allowed, would mean setting aside the order dated 25.11.2006. The said application having been dismissed by the leaned executing Court, a writ petition was filed by the petitioners. By reason of the impugned judgment the said writ petition has also been dismissed.

The learned executing Court as also the High Court, in our opinion, have correctly arrived at the finding that the proceeding initiated by the petitioners being one under Order 21 Rule 97 of the C.P.C., the provisions of Order 22 Rule 3 shall apply. As the said proceeding abated automatically on the expiry of 90 days from the date of death of the decree-holder, application under Section 151 and Order

1 Rule 10 of the C.P.C. was not maintainable. This special leave petition is, hence, dismissed.

(A.S. BISHT)
COURT MASTER

(USHA SHARMA)
COURT MASTER