

PETITIONER:
RAM KALA

Vs.

RESPONDENT:
DEPUTY DIRECTOR (CONSOLIDATION) & ORS.

DATE OF JUDGMENT: 09/09/1997

BENCH:
A. S. ANAND, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:
Present:

Hon'ble Dr. Justice A.S. Anand
Hon'ble Mr. Justice K. Venkataswami

A.P. Mohanty, Adv. for the Petitioner
Ujjal Singh, K.P. Singh and Hassasin, R.C. Kaushik, Advs.,
for the Respondents.

O R D E R

The following Order of the Court was delivered:

K. Vankataswami

The petitioner initially filed Interlocutory Application (unnumbered) for bringing the legal representatives of Respondent Nos.4 to 7 on the assumption that those respondents were no more. However, when the matter came up before the Court on February, 24, 1997, time was taken to ascertain the particulars of the legal representatives of the deceased respondents. Later on, it was asserted that only respondent No.5 was dead and the earlier application for bringing on record the legal representatives of respondents 4 to 7 had been filed on a mistaken impression. The petitioner filed I.A.No.5 of 1997 to withdraw the earlier application for substitution of legal representatives. Thereafter, a fresh application, I.A.No.3 of 1997 was filed for condoning the delay of nearly five years in substituting the legal representatives of respondent No.5 and I.A.No.4 of 1997 was filed for an interim injunction restraining the respondents from alienating, selling or transferring in any other manner the suit property.

It is stated in the application for condoning the delay of five years in bringing the legal representatives of respondent 5 on record that that said respondent died on 27.11.92. It is seen from the said application that a Civil Miscellaneous Writ Petition No.27592/94 was filed in the Miscellaneous High Court. That shows that respondent No. 5 was dead even when the petitioner initially filed the Civil Miscellaneous Writ Petition in the High Court. Likewise, the present Special Leave Petition was also filed against a dead person.

Mr. Mohanty, learned counsel appearing for the petitioner, brought to our notice Order XVI Rules 8 and 9 of

the Supreme Court Rules, 1990 and contended that it is open to the petitioner to file this application to bring the legal representatives of the deceased fifth respondent on record in this Court even though fifth respondent had died even before the matter was filed in the High Court.

We do not think it is necessary for us to go into the correctness or otherwise of the said contention, though prima facie on facts of this case the contention is not sound. in the view we propose to take on I.A.No.3 of 1997. The learned counsel appearing for the contesting respondents vehemently opposed the application for condoning the delay of five years in bringing the legal representatives of the deceased respondent No.5.

Perused the pleadings and heard the learned counsel for the parties. We are not at all satisfied with the reasons given in the application for condoning the delay of five years in bringing on record the legal representatives of deceased, fifth respondent. The reasons are neither satisfactory nor reasonable. No sufficient cause has been shown for condoning *** the delay. 1.A.No. 3 of 1997 is, therefore, dismissed. On that ground, 1.A.Nos.2 and 3 of 1997 are liable to be dismissed. Accordingly, they are dismissed.

When we asked learned counsel for the petitioner that in the event of the application for condoning the delay in bringing the legal representatives of the deceased fifth respondent is dismissed and his legal representatives are not brought on record, the cause of action survive against the other contesting respondents. The learned counsel unhesitatingly replied stating that the cause of action against other contesting respondents would not survive in that case. If that be so, the Special leave Petition is liable to be dismissed as abated. Accordingly, the Special Leave Petition is dismissed. Accordingly, the Special Leave Petition is liable to be dismissed as abated. Accordingly, the Special Leave Petition is dismissed. Consequently, no orders are necessary in I.A.Nos.4 and 5 and of 1997.