2026 INSC 48

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 172 OF 2026
(@ SLP (C) No(s). 36787 of 2017)

KISHORILAL (D) THR. LRS & ORS. ...APPELLANT (S)

VERSUS

GOPAL & ORS. ...RESPONDENT (S)

WITH

CIVIL APPEAL NO. 173 OF 2026
(@ SLP (C) No(s). 397 of 2018)

J U D G M E N T

MANOJ MISRA, J.

SLP (C) No. 36787 of 2017

1. Leave granted.

Facts giving rise to appeal (i.e., SLP (C) No.36787 of 2017)

2. This appeal arises from Original Suit No. 5A of 1992 which was instituted by Gopal (first

respondent) against Kishorilal (i.e., first appellant (since deceased), who is now represented through his LRs[1]), *inter alia*, for declaration and injunction and, later, by way of amendment, for specific performance of agreement to purchase the suit scheduled property. During pendency of the suit, Brajmohan and Manoj (i.e., the appellants in the connected appeal), purchased the suit property from Kishorilal, *vide* sale-deed dated 20.04.1992.

3. The aforesaid suit was decreed on 18.10.2000. Aggrieved therewith, Kishorilal and the transferees *lis pendens*, namely, Brajmohan and Manoj, jointly filed appeal (i.e., F. A. No. 213 of 2000) before the High Court of Madhya Pradesh, Bench at Gwalior[2]. During pendency of the appeal, Kishorilal died on 17.12.2005. Therefore, *vide* order dated 10.07.2006, his LRs, namely, (i) Suresh, (ii) Murarilal, (iii) Prakash and (iv) Sitabai were

[1] Legal Representatives
[2] High Court

substituted as appellants No. 1(1), 1(2), 1(3) and 1(4), respectively.

4. On 22.07.2007 Murarilal i.e., appellant No. 1(2) died. On his death, the remaining appellants filed an application (i.e., IA No.17118 of 2010) on 19.10.2010 for deletion of Murarilal from the array of parties on the ground that interest of Kishorilal in the suit property is already represented by Brajmohan and Manoj (i.e., appellants No. 2 and 3 who had purchased the suit property) and other LRs of Kishorilal. The said application was allowed by order dated 09.05.2011, which reads as under:

> "Heard on I.A. No. 17118/2010, which is an application under Order XXII Rule 2, 4(4) and under Section 11 of CPC (which should be read Rule 11) for deleting the name of appellant no.1 who has died and sold the suit property to appellant no.2 and 3 who are his legal representatives.
>
> Considering the averments made in this application, the same is allowed at the risk and cost of the appellants. The name of appellant no. 1 be deleted from the array of cause title within one week."

[Note: There appears typographical mistake in the above extracted order as the prayer in IA No.17118/2010 was not to delete Kishorilal (appellant no.1) from array of parties but to delete one of his LRs, namely, Murarilal i.e., appellant 1(2), as the estate of Kishorilal was represented by appellants 2 and 3 and other LRs of Kishorilal.]

5. On deletion of Murarilal's name from the array of parties in the appeal, and non-substitution of his LRs, an application (IA No.2667/ 2011) was filed by the plaintiff-respondent (i.e., Gopal) to dismiss the appeal as having abated. This application was dismissed by the High Court *vide* order dated 04.03.2013, which is reproduced below:

> "Heard on I.A. No. 2667/2011, which is an application filed on behalf of respondents for treating the appeal as abated as the legal representatives of appellant Kishorilal have not been brought on record.
>
> Learned Counsel for the appellants submitted that appellants no.2 and 3 have already been brought on record as Legal Representatives of appellant Kishorilal *vide* order dated 09.05.2011 on the ground that the disputed property has been sold by Kishorilal to appellants no.2 and 3 therefore, appellants no.2 and 3, who are purchasers *lis pendens*, are legal representatives of appellant Kishorilal as the

> property has been purchased by them and legal heirs of appellant Kishorilal have no right, title or interest in the disputed property.
>
> Since the Legal Representatives of appellant Kishorilal who are having the right, title and interest over the disputed property are already on record being appellants no.2 and 3, therefore, it cannot be said that the appeal has abated.
>
> Appellants may implead other legal heirs of appellant Kishorilal as Legal Representatives if they are necessary party in the appeal.
>
> List the case for final hearing in due course."

After the aforesaid order was passed, on 14.03.2013 an application (IA No.1438/ 2013) was filed, under Order 22 Rules 4 and 11 read with Order 1 Rule 10 of the Code of Civil Procedure, 1908[3], to implead heirs of Murarilal as respondents. On this application, an objection was filed by the plaintiff-respondent. However, the application was allowed *vide* order dated 03.05.2013, which is reproduced below:

> "Heard on I.A. No. 1438/2013 which is an application under Order XXII Rule 4 and 11 C.P.C. and under Order I Rule 10 C.P.C. for

[3] CPC

> deleting the name of original appellant no.1 as he has sold the property to appellant no.2 and 3 and to bring the Legal Representatives of appellant no. 1(2) on record. Other Legal Representatives of appellant no.1 are on record, therefore, there is no abatement of appeal.
>
> Let the necessary amendment be carried out within 7 days from today.
>
> List the case for final hearing in Second Week of July, 2013."
>
> *[Note: There appears some typographical error in this order as I.A. No.1438/2013 did not seek deletion of appellant no.1 rather it sought impleading the heirs of Murarilal as proforma respondents]*

6. Thereafter, on 15.07.2017 an application was filed by the appellants for setting aside abatement of the appeal, if any, and for condoning the delay, if any, in the interest of justice. To this application, on 20.07.2017 an objection was filed by the plaintiff-respondent. While the aforesaid application was pending, an application was filed for recall of the order dated 09.05.2011 by which Kishorilal's name was erroneously deleted from the array of parties. To

this application also, on 27.07.2017 an objection was filed by the plaintiff-respondent.

7. By the impugned order dated 12.09.2017, the High Court rejected the application of the appellants to recall the order dated 09.05.2011 and held that on deletion of Murarilal's name from the array of parties, the appeal had abated and, therefore, the appeal is liable to be dismissed as having abated.

8. Aggrieved by the order of the High Court dismissing the appeal as having abated, present appeal, by special leave, has been filed.

SLP (C) No. 397 of 2018

9. Leave granted.

Facts giving rise to connected appeal (i.e., SLP (C) No.397 of 2018

10. The connected appeal arises from Original Suit No. 10A of 1995. This suit was instituted by Brajmohan and Manoj (i.e., transferees of Kishorilal) for eviction of Gopal (i.e., plaintiff-respondent in the other appeal) from the suit scheduled property, *inter*

alia, on the ground that the plaintiffs had purchased the suit property through sale deed executed by Kishorilal and the suit property is required for their use.

11. The Trial Court dismissed the suit *vide* judgment and order dated 18.10.2000. Against which, F. A. No. 217 of 2000 was filed before the High Court. As the High Court had dismissed First Appeal No. 213 of 2000 as abated, the decree of specific performance in favour of Gopal attained finality, rendering the sale-deed in favour of Brajmohan and Manoj void, F.A. No.217 of 2000 was dismissed by the High Court *vide* separate order dated 12.09.2017.

12. Aggrieved by dismissal of F.A. No.217 of 2000, the present appeal has been filed, by special leave to appeal (i.e., SLP (C) No. 397 of 2018).

13. Since the decision of the High Court in F. A. No. 217 of 2000 is a consequence of dismissal of F.A. No. 213 of 2000 as abated, these two appeals were

heard together and are being decided by a common judgment and order.

14. We have heard Sri Puneet Jain, Sr. Adv., for the appellant; and Sri Yatindra Singh, Sr. Adv., for the respondents.

SUBMISSIONS ON BEHALF OF APPELLANTS

15. Learned counsel for the appellants submitted:

(i) Kishorilal (i.e. judgment-debtor in O.S. No. 5A of 1992) had already transferred his interest in the suit scheduled property (i.e., subject matter of the agreement), therefore, his interest was fully represented by the purchasers i.e., transferees *lis pendens*, namely, Brajmohan and Manoj, who were on record as appellants No. 2 and 3 in F.A. No. 213 of 2000; hence, on death of Kishorilal, the appeal would not abate as the right to pursue the appeal survived on the surviving appellant(s).

(ii) A transfer hit by Section 52 of the Transfer of Property Act, 1882 (i.e. the doctrine of *lis pendens*) is not void though subservient to the rights of the parties under the decree or order which may be made in the suit or the proceeding. In such circumstances, Brajmohan and Manoj were entitled to represent the estate of Kishorilal not only as transferee but also as an inter-meddler of the estate of Kishorilal.

(iii) Besides that, on death of Kishorilal, his four legal heirs, namely, Suresh, Murarilal, Prakash and Sitabai, were brought on record. Even if one of them died, the estate of Kishorilal was substantially represented through Suresh, Prakash and Sitabai. Hence, there was no question of abatement of the appeal for non-substitution of the legal representatives of Murarilal.

(iv) If Kishorilal's name was erroneously deleted after his death, it could be restored by recall/ correction. Moreover, his heirs and legal representatives were already on record, therefore, there was no question of abatement of the appeal.

(v) The High Court *vide* order dated 04.03.2013 had already negatived the plea of abatement of appeal by observing that other LRs of Kishorilal were on record besides appellants No. 2 and 3 therefore, on non-substitution of one of the heirs of Kishorilal, High Court could not have declared appeal to have abated. Moreover, such declaration was barred by the principle of *res judicata.*

(vi) Otherwise also, High Court *vide* order dated 04.03.2013 had given liberty to implead other legal representatives of Murarilal, in case necessary, therefore, impleadment

application was allowed *vide* order dated 03.05.2013. In such circumstances, when all LRs of late Kishorilal were on record, there was no justification to dismiss the appeal as having abated.

SUBMISSIONS ON BEHALF OF RESPONDENT(S)

16. *Per contra*, learned counsel for the respondents submitted:

(i) A suit for specific performance is for enforcement of contractual obligations. In such a suit, the decree must require the vendor and subsequent purchaser, if any, to execute the sale-deed in favour of decree-holder in terms of the agreement. This legal position is settled by this Court in ***Lala Durga Prasad and Others v. Lala Deep Chand and Others***[4]***, followed in R.C. Chandiok and Anr. v. Chuni Lal***

[4] (1953) 2 SCC 509

Sabharwal and Ors.[5]. Therefore, if all legal heirs of Kishorilal (i.e., vendor) including heirs of his legal heir (i.e., Murarilal) are not brought on record, within the limitation period, the decree of specific performance would attain finality *qua* one of the heirs of Kishorilal. And since decree of specific performance is inseparable, continuance of appeal might result in inconsistent decrees, therefore, the appeal would abate as a whole on non-substitution of one of the heirs of Kishori Lal, namely, Murarilal.

(ii) In a suit for specific performance, the vendor is a necessary party. Therefore, even if the subsequent purchaser is on record, the vendor would have to be on the record for a valid decree. In such circumstances, the benefit of Order 41 Rule 4 of CPC is not available as was held by this Court in

[5] (1970) 3 SCC 140

Dwarka Prasad Singh and Others v. Harikant Prasad Singh and Others[6].

(iii) Abatement is by operation of law. Therefore, even in absence of a formal order, the appeal or proceeding would abate for non-substitution within the period of limitation.

(iv) Once abatement takes place, it can be set aside by substitution after condoning the delay and not by way of impleadment. Therefore, if time for substitution has lapsed and the appeal has abated, in absence of an order condoning the delay in seeking substitution and setting aside abatement, by mere impleadment of LRs of a deceased party, abatement cannot be deemed set aside. Hence, the order dated 03.05.2013 is of no consequence more so because Murarilal died

[6] (1973) 1 SCC 179

on 22.07.2007 and by the time impleadment was allowed, the appeal had already abated.

(v) The application to set aside abatement was filed on 24.07.2017 i.e. about 10 years after Murarilal's death. Therefore, it was justifiably rejected by the High Court.

(vi) The order dated 09.05.2011 permitting deletion of Kishorilal was at the risk of appellants No. 2 and 3 and, therefore, the said order cannot obviate subsequent adjudication regarding abatement of appeal on ground of *res judicata*.

Based on the aforesaid submissions, on behalf of respondents, it was submitted that both appeals are devoid of merit and should be dismissed.

17. We have considered the rival submissions and have carefully perused the materials on record.

ISSUES

18. Upon considering the rival submissions, in our view, following issues arise for our consideration:

(i) Whether F. A. No. 213 of 2000 abated on non-substitution of LRs of Murarilal i.e., appellant 1(2), who was one of the LRs of deceased-judgment debtor Kishorilal?

(ii) Whether the order of the High Court, dated 03.05.2013, holding that appellants No. 2 and 3 along with other heirs of Kishorilal sufficiently represented the interest of Kishorilal in the appeal, would, by the principle of *res judicata*, bar a declaration that the appeal had abated?

(iii) Whether by allowing impleadment of the heirs and legal representatives of Murarilal as proforma respondents in F. A. No. 213 of 2000, *vide* order dated 03.05.2013, the High Court, in effect set aside abatement, if any?

(iv) Whether, in the peculiar facts of the case, the High Court ought to have condoned the delay and set aside the abatement, if any, of F.A. No.213 of 2000?

ANALYSIS

Summary of undisputed facts

19. Before addressing the issues, a brief resume of undisputed facts of the case would be apposite. Suit No. 5A of 1992 was instituted by Gopal (plaintiff-respondent) against Kishorilal for declaration and injunction and, later, by way of amendment, for specific performance of a purchase agreement between Kishorilal and Gopal concerning the suit property, which was sold by Kishorilal, during pendency of the suit, to Brajmohan and Manoj (i.e., the appellants), *vide* sale-deed dated 20.04.1992. In consequence, the appellants were also impleaded as defendants.

20. The suit was decreed by the trial court. Against which, F. A. No. 213 of 2000 was jointly filed by Kishorilal (i.e., appellant no.1), Brajmohan (appellant no.2) and Manoj (appellant no.3) before the High Court. During pendency of the appeal, Kishorilal died on 17.12.2005. His legal heirs including Murarilal were substituted *vide* order dated 10.07.2006. Thereafter, Murarilal died in the year 2007. An application was submitted for deleting him from the array of parties on the ground that interest of Kishorilal was sufficiently represented by his other LRs including appellants No. 2 and 3 (i.e., *lis pendens* transferees). On this application, an order was passed on 09.05.2011 deleting appellant no.1 (Kishorilal) from the array of parties, when the prayer was to delete Murarilal. It is necessary to note that on the date when order dated 09.05.2011 was passed Kishorilal was already dead and stood substituted by his four legal heirs including Murarilal. Thus, it is clear that the direction to delete Kishorilal from the

array of parties was nothing but a typographical mistake which ought to be read/considered as a direction to delete Murarilal as is clear from subsequent orders passed in the course of the appeal.

21. In the aforesaid context, when plaintiff-respondent filed an application for abatement on non-substitution of LRs of Murarilal, the High Court passed an order on 04.03.2013 holding that since LRs of Kishorilal, namely, appellants No. 2 and 3, who had purchased the property, and other legal heirs were there on record, the appeal cannot be said to have abated. However, the High Court gave liberty to implead other heirs of Kishorilal. Pursuant thereto, application was filed to bring on record heirs of Murarilal as proforma respondents. On this application, *vide* order dated 03.05.2013, the High Court allowed impleadment of Murarilal's heirs as proforma respondents.

22. Later, when, during hearing of the appeal, issue was raised by the decree holder that appeal has already abated consequent to non-substitution of the heirs of Murarilal, formal application was filed for setting aside abatement along with prayer to condone the delay. This application was rejected and the appeal (i.e., F.A. No.213 of 2000) was dismissed as having abated *vide* impugned order dated 12.09.2017.

23. In view of dismissal of F.A. No.213 of 2000, the decree of specific performance in favour of defendant in Suit No.10A of 1995 became operative, therefore, F.A. No.217 of 2000, arising from dismissal of Suit No.10A of 1995, was dismissed *vide* second impugned order dated 12.09.2017.

24. On summation of facts what becomes clear is that out of four heirs of Kishorilal, three remained on record. The fourth, namely, Murarilal, died and was not substituted within time. Though, later, his heirs and legal representatives were also brought on record

as proforma respondents in the appeal. In that context, we shall address the issues.

Issues (i) and (ii)

25. Issues (i) and (ii) are inter-related, therefore we shall address them together.

26. As we have noticed above that on death of Kishorilal (i.e., appellant No.1) all his four heirs were brought on record of F.A. No.213 of 2000 and, later, on death of one of his heirs i.e., Murarilal, his LRs were also brought on record, though beyond the period prescribed by the law of limitation. It is thus not a case where deceased Kishorilal (i.e., the vendor) was totally unrepresented. Rather, he was represented, initially, through his four legal heirs and, later, on death of one of them, namely, Murarilal, by three of them and the purchaser of his interest in the property (i.e., the appellants No. 2 and 3). Later, even legal heirs of Murarilal were brought on record as proforma-respondents through an order of impleadment.

27. The thrust of the submissions of the learned counsel for the respondent(s) is on there being no application of mind on the part of the High Court in allowing impleadment of the heirs of Murarilal as proforma respondents because, by that date, the appeal had already abated. According to him, in absence of condonation of delay in filing an application to set aside abatement, or to substitute the legal heirs, the appeal had abated by operation of law and, therefore, such impleadment cannot revive the appeal.

28. Besides that, the learned counsel for the respondents submitted that the order dated 09.05.2011 deleting the name of Kishorilal/ Murarilal was at the risk and cost of the appellants which means that the order would not bar subsequent adjudication of the issue on the principle of *res judicata*.

29. On the other hand, the learned counsel for the appellants laid emphasis on the observations in

the subsequent order dated 04.03.2013 wherein the Court had observed that since legal representatives of Kishorilal, who have right, title and interest over the disputed property, are already on record as appellants No.2 and 3, the appeal would not abate. According to the appellants, this observation in the order dated 04.03.2013 coupled with subsequent order dated 03.05.2013 bars, by principle of *res judicata,* fresh consideration of the issue *qua* abatement of the appeal on non-substitution of the legal heirs of Murarilal (i.e., one of the heirs of deceased-party Kishorilal).

30. As far as the principle of *res judicata* is concerned, we are conscious of the law that it applies also as between two stages in the same litigation to the extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the

same proceedings[7]. However, what is important is that this does not preclude the appellate court or a higher court to test the correctness of that decision[8].

31. However, before delving further on the above aspect, we shall first consider the decisions cited by the learned counsel for the respondents to canvass that a decree of specific performance must necessarily require the vendor to execute the sale deed even if the subject matter of sale agreement has been sold by the vendor to a third person. According to plaintiff-respondent's counsel, though a subsequent transferee may be required to join in the conveyance, particularly where the transferee is not a transferee *lis pendens,* the vendor would necessarily have to join in the execution of the sale deed. As a sequitur, it is argued, if the appeal abates *qua* the vendor it abates as a whole.

[7] See: Satyadhyan Ghosal & Ors. v. Deorajin Debi (Smt.) & Anr., 1960 SCC OnLine SC 15: AIR 1960 SC 941
[8] See: Maharaja Moheshur Singh v. Bengal Government (1859) 7 MIA 283; affirmed in Satyadhyan Ghosal (supra), paragraph 16.

Vendor is necessary party in a suit for specific performance

32. In ***Lala Durga Prasad***[9]**,** before this Court a question arose as to what would be the proper form of a decree in a suit for specific performance where the subject matter of the sale agreement has been sold and the title to the property has validly passed from the vendor and resides in the subsequent transferee i.e., where the sale to subsequent transferee is not void but only voidable at the option of the earlier contractor. On the said issue, this Court considered and rejected three alternative forms of decrees, namely, (a) compelling the vendor to execute the sale deed; (b) cancelling the subsequent sale and ordering conveyance in favour of plaintiff; and (c) conveyance in favour of plaintiff by the subsequent purchaser alone. After rejecting the above three options, this Court held:

> "42. In our opinion, the proper form of decree is to direct specific performance of

[9] See: Footnote 4

> the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff."

33. In ***R.C. Chandiok***[10]***,*** decision of this Court in ***Lala Durga Prasad*** was followed.

34. In ***Dwarka Prasad***[11], the question that arose before this Court was whether in absence of substitution of legal heirs of the vendor, the appeal by a subsequent purchaser against the decree of specific performance would abate. Two arguments were raised on behalf of the appellant therein, namely, (a) that vendor was not a necessary party as the subsequent purchaser represents his interest; and (b) the case would be covered by the provisions of Order 41 Rule 4 of CPC. Both arguments were rejected by this Court. While rejecting the first argument, decision in ***Lala Durga Prasad*** was relied

[10] See: Footnote 5
[11] See: Footnote 6

upon to hold that in a suit for specific performance the vendor is a necessary party as he must join in the execution of the sale deed. The second argument was rejected by holding that since the appeal *qua* the vendor would abate, the appeal at the behest of subsequent purchaser cannot continue as it might result in conflicting decrees.

35. The rationale of joining the vendor in the conveyance in favour of holder of a decree of specific performance, notwithstanding that vendor has passed on his interest in the property to a third person, is discernible from the following observations in ***Dwarka Prasad****:*

> "9. … In a suit instituted by a purchaser against the vendor and a subsequent purchaser for specific performance of the contract of sale the proper form of the decree is to direct specific performance of the contract between the vendor and the plaintiff and further direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. … Thus, …the conveyance has to be executed by the vendor in favor of the plaintiff who seeks specific performance of the contract in his favor and the

subsequent transferee has to join in the conveyance only to pass his title which resides in him. It has been made quite clear that he does not join in any special covenants made between the plaintiff and his vendor. All that he does is to pass on his title to the plaintiff. ..... It is thus difficult to sustain the argument that the vendor is not a necessary party when, according to the view accepted by this court, the conveyance has to be executed by him although the subsequent purchaser has also to join as to pass on the title which resides in him to the plaintiff. It must be remembered that if there are any special covenants and conditions agreed upon in the contract for sale between the original purchaser and the vendor those have to be incorporated in the sale although it is only the vendor who will enter into them and the subsequent purchaser will not join in those special covenants. But without the vendor joining in the execution of the sale deed special covenants, if any, between him and the original purchaser cannot be incorporated in the sale deed. The whole idea and purpose underlying a decree for specific performance is that if a decree for such a relief is granted the person who has agreed to purchase the property should be put in the same position which would have obtained in case the contracting parties i.e., vendor and the purchaser had, pursuant to the agreement, executed a deed of sale and completed it in every way. Therefore, it is essential that the vendor must join in the execution of the sale deed. If that be so, it is not possible to comprehend how he is not a necessary party..."

36. The law is thus settled that the vendor is a necessary party in a suit for specific performance of an agreement for sale, notwithstanding that vendor has transferred his interest in the subject matter of the agreement to a third party. Reason being that the transferee/ third party cannot be subjected to special covenants, if any, between the vendor and the plaintiff-purchaser. Besides that, the object of the decree of specific performance is to put the person who has agreed to purchase the property in the same position which he would have obtained in case the contracting parties i.e., vendor and the purchaser had, pursuant to the agreement, executed a deed of sale and completed it in every way.

Decisions relied on behalf of the Appellants

37. Now, we shall consider the decisions cited by the appellant, namely,

(a) ***Bhurey Khan v. Yaseen Khan (Dead) by LRs & Ors.***[12]**.** The issue under consideration in this case was whether the High Court was justified in abating the second appeal for non-impleadment of some of the heirs of the deceased respondent. This Court, following its earlier decision in ***Mahabir Prasad v. Jage Ram & Others***[13]**,** held that where the estate of a deceased party is sufficiently represented by his legal heirs on record, proceedings would not abate if some of the heirs are left out. The said view has been followed in ***Shivshankara & Anr. v. H.P. Vedavyasa Char***[14].

[12] 1995 Supp (3) SCC 331

[13] (1971) 1 SCC 265. See Paragraph 7, where it was observed:

> "7. …. 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…"

[14] (2023) 13 SCC 1, paragraphs 59 and 60

(b) ***Mohammad Arif v. Allah Rabbul Alamin & Ors.***[15] . In this case, it was held that transferee from a deceased party could represent the interest of the deceased party as an intermeddler and if such transferee is already on record, there is no necessity for an application to bring on record the legal heirs of the deceased appellant. [*Note: It is not clear from the reported judgment whether the suit here was for specific performance of a contract.]*

(c) ***K. Naina Mohamed (Dead) through LRs v. A.M. Vasudevan Chettiar (dead) through LRs & Ors.***[16]**.** In this case, following ***Mohd. Arif (supra)***, it was held that party which has purchased the property concerned can represent the estate of deceased. [*Note: It is not clear from*

[15] (1982) 2 SCC 455
[16] (2010) 7 SCC 603

the reported judgment whether the suit was for specific performance of a contract. Although it appears to be based on right of pre-emption. Otherwise also, in this case decision in ***Lala Durga Prasad*** *(supra) was not considered.*]

(d) ***Y.B. Patil & Ors. v. Y.L. Patil***[17]***.*** In this case it was observed that principles of *res judicata* can be invoked not only in separate subsequent proceedings but also in subsequent stage of the same proceedings. Therefore, once an order is made during a proceeding it becomes final and is binding at any subsequent stage of that proceeding. The same principle was reiterated in ***Bhanu Kumar Jain v. Archana Kumar & Anr.***[18]

[17] (1976) 4 SCC 66
[18] (2005) 1 SCC 787

(e) ***Mithailal Dalsangar Singh & Ors. v. Annabai Devram Kini & Ors.***[19]**.** In this case, it was, *inter alia*, held that a simple prayer to bring LRs on record, without specifically praying for setting aside abatement, may in substance be construed as a prayer to set aside the abatement. Further, the prayer for setting aside abatement is to be considered liberally and the courts must adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a *lis* determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court.

[19] (2003) 10 SCC 691

(f) ***Madhukar Nivrutti Jagtap & Ors. v. Pramilabai Chandulal Parandekar (Dead) through LRs & Ors.***[20]. In this case it was held that the effect of doctrine of *lis pendens* is not to annul all transfers effected by the parties to a suit but only to render them subservient to the rights of the parties under the decree or order which may be made in that suit. *[Note: This was cited so as to canvass that the sale deed executed by Kishorilal in favour of the second and third appellants was not void and, therefore, they could validly represent the interest of Kishorilal and, therefore, the appeal would not abate*].

Relevant legal principles deducible from the decisions cited by both sides

[20] (2020) 15 SCC 731

38. Upon consideration of the decisions cited by both sides, the legal principles deducible therefrom, and relevant to the issue in hand, are summarized below:

(1) Before declaring a suit or proceeding to have abated on ground of non-substitution of the heirs/ legal representatives of a deceased party, the Court must examine whether the interest of the deceased party *qua* the subject matter of the proceeding is sufficiently represented by other parties already on record. If the interest of the deceased party is sufficiently represented by other parties already on record, and the decree/order eventually passed in the suit or proceeding would not be rendered non-executable for absence of that party, the suit or proceeding would not abate.

(2) In a suit for specific performance of an agreement for sale of an immovable property, vendor is a necessary party notwithstanding he has transferred his interest in the property to a third party. As a sequitur, a suit or an appeal emanating from such a suit would abate if, upon death of the vendor, his legal heirs/ representatives are not substituted.

(3) Though a transfer *lis pendens* is not always void, such transferee's title is subservient to the decree that may ultimately be passed in the pending suit. As a sequitur, a transferee *lis pendens* is not a necessary party in a suit for specific performance.

(4) However, a transferee *lis pendens* may pursue the appeal against a decree of specific performance against the vendor, as a legal representative/ inter-meddler of the estate of

the vendor. But, having regard to the nature of decree that is required to be passed in a suit for specific performance, as held in ***Lala Durga Prasad (supra)*** and ***Dwarka Prasad (supra),*** the vendor would have to be impleaded as a party in the appeal and on his death, on non-substitution of his heirs /legal representatives, the appeal would abate.

Kishorilal (deceased-defendant) sufficiently represented in the appeal before the High Court

39. Having culled out the relevant legal principles, we shall now consider whether, on non-substitution of the heirs of Murarilal, the appeal had abated or not. As noticed above, Murarilal was one of the four heirs of Kishorilal. Kishorilal (appellant No.1) had already transferred the property to appellants No. 2 and 3 during the course of suit proceeding. Therefore, on the date of filing the appeal, title in the subject matter of the sale

agreement resided in those appellants albeit subservient to the decree. However, presence of Kishorilal was necessary to effectively execute the decree of specific performance which is in the nature of a direction to fulfil contractual obligations. In such circumstances, on death of Kishorilal, his LRs were required to be brought on record. In the present case, on the death of Kishorilal (i.e., appellant No.1) all his LRs were substituted as appellants No. 1(1), 1(2), 1(3) and 1(4), though, later, one of them, namely, Murarilal i.e., appellant 1(2), died. Since three legal heirs of Kishorilal were already on record, besides the appellants No.2 and 3 in whom title in the property resided, the estate of Kishorilal was sufficiently represented and, therefore, in our view, the appeal did not abate on non-substitution of LRs of Murarilal as was rightly held earlier by the High Court *vide* order dated 03.05.2013. The aforesaid view is in conformity with

the law laid down by this Court in ***Bhurey Khan*** and ***Mahabir Prasad***.

40. The decision in ***Dwarka Prasad (supra),*** relied by the learned counsel for respondents, in our view, is not of much help to the respondents because in that case the vendor's interest was not represented at all. Whereas in the present case, three out of four legal heirs of Kishorilal (i.e., the vendor) were already on record. In our view, there is a clear distinction between non-substitution of the legal representatives/ legal heirs of a deceased party and non-substitution of one of the heirs of a deceased party. In the latter, if the interest of the deceased party is sufficiently represented by other heirs/ legal representatives on record, there will be no abatement as was held in ***Mahabir Prasad (supra)*** and ***Bhurey Khan (supra)***. Therefore, in our view, ***Dwarka Prasad's*** decision is distinguishable on facts.

High Court's final decision is hit by principle of *res judicata*

41. Besides above, once the High Court, *vide* order dated 03.05.2013, had taken the view that appeal had not abated on non-substitution of heirs of Murarilal i.e., appellant No.1(2), as other heirs of Kishorlal were on record besides appellants 2 and 3, it was not open for the High Court to revisit the issue later, because such an exercise by the High Court was hit by principle of *res judicata* which applies with equal force to different stages of the same proceeding as it does to a separate subsequent proceeding. In this regard we are supported by decisions of this Court in ***Satyadhyan Ghosal[21] , Y.B. Patil (supra)*** and ***Bhanu Kumar Jain (supra)***.

42. The argument on behalf of respondent that order dated 09.05.2011 specifically mentions that deletion was at the risk of the appellant and, therefore, the issue was kept open does not cut much

[21] See; Footnote 7

ice, because in the subsequent orders dated 04.03.2013 and 09.05.2013, the High Court specifically held that appeal had not abated.

43. We are, therefore, of the considered view that the appeal had not abated on non-substitution of the heirs of Murarilal within time. Issue (i) and (ii) are decided in the aforesaid terms.

Direction to delete name of Appellant No. 1 (i.e., Kishorilal's name) from the array of parties was nothing but a clerical/ typographical mistake in the order dated 9.5.2011

44. So far as the direction in the order dated 09.05.2011 to delete appellant No.1 is concerned, it was a pure clerical/ typographical error inasmuch as the prayer made was to delete appellant No.1(2) i.e., Murarilal from the array of parties as other LRs of Kishorilal sufficiently represented his interest. Such a mistake could be corrected at any stage in exercise of powers under Sections 151 and 152 of CPC. Therefore, the plaintiff-respondent cannot take advantage of the aforesaid mistake.

Issue (iii)

45. As we have already concluded that appeal had not abated on non-substitution of legal heirs of deceased Murarilal i.e., appellant No.1(2), there was no question of setting aside abatement. Rather, the High Court was well within its jurisdiction in allowing impleadment of his heirs as proforma respondents in exercise of powers under Order 1 Rule 10 of CPC. Issue (iii) is decided accordingly.

Issue (iv)

46. In view of our conclusion that the appeal had not abated, the High Court had the discretion to allow impleadment of Murarilal's heirs and for such impleadment, it was not required to condone the delay or to set aside abatement. Issue (iv) is decided accordingly.

Conclusion

47. In view of our findings on the issues framed above, the view of the High Court that the appeal had abated is erroneous and is liable to be set aside.

Since the connected appeal was dismissed by the High Court only on account of dismissal of the other appeal as abated, the order dismissing the said appeal is also liable to be set aside.

48. Consequently, these appeals are allowed. The impugned order(s) dated 12.09.2017 passed by the High Court in F.A. No.213 of 2000 and F.A. No.217 of 2000 are set aside. Both the aforesaid first appeals are restored to their original number on the file of the High Court and they shall be decided in accordance with the law.

49. Pending applications, if any, in both the appeals shall stand disposed of.

.....J.
(MANOJ MISRA)

.....J.
(UJJAL BHUYAN)

New Delhi;
January 12, 2026.