

PETITIONER:
RIKHU DEV, CHELA BAWA HARJUG DASS

Vs.

RESPONDENT:
SOM DASS (DECEASED) THROUGH HIS CHELA SHIAMDASS

DATE OF JUDGMENT 28/08/1975

BENCH:
MATHEW, KUTTYIL KURIEN
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RAY, A.N. (CJ)
CHANDRACHUD, Y.V.

CITATION:
1975 AIR 2159 1976 SCR (1) 487
1976 SCC (1) 103

ACT:

Code of Civil Procedure (Act 5 of 1908) O. 22 rr. 3, 4 and 10-Suit by de jure Mahant against de facto Mahant for possession and management-Death of defendant and election of another Mahant during pendency of appeal-If appeal abates.

HEADNOTE:

The appellant filed the suit on the basis that as the Mahant of a Dera he was entitled to possession and management of the properties of its branch Dera. The defendant contended that it was an independent Dera and that he was in possession of the properties as its lawfully appointed Mahant. The trial court decreed the suit but in appeal the decree was reversed. While the second appeal, preferred by the appellant, was pending in the High Court, the defendant died. As the application to implead the elected successor of the defendant was filed beyond the period prescribed for an application under O. 23, rr. 3 and 4, the High Court held that the appeal had abated and that there was no ground for setting aside the abatement. In appeal to this Court, the appellant contended that even if the Chela, who had been elected as the Mahant on the death of the defendant, was not impleaded within the period prescribed, there would be no abatement, because he represented the Dera.

Allowing the appeal to this Court,

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HELD: (1) When a suit is brought by or against a person in a representative capacity and there is a devolution of the interest of the representative, the rule that has to be applied is O. 22, r. 10 and not O. 22, rr. 3 or 4, whether the devolution takes place as a consequence of death or for any other reason. The word 'interest' in the rule means interest in the property, i.e., the subject matter of the suit, and the interest is the interest of the person who was the party to the suit. This rule is based on the principle that the trial of a suit cannot be brought to an end merely because the interest of a party in the subject-matter of the suit has devolved upon another during the pendency of the suit. The suit may be continued against the person acquiring the interest with the leave of the Court. [489F-G]

In the present case, when the defendant died, the interest which was the subject-matter of the suit devolved upon his successor elected as the Mahant of the Dera, and therefore, the appeal could be continued under O. 22 r. 10, C.P.C. [489B-C]

(2) Though it was uncertain on the death of the defendant as to who would become the Mahant by election, it would not make any difference for the application of O. 22, r. 10. The devolution of the interest in the subject matter of the suit took place when the new Mahant was elected. The suit was for possession and management of the Dera and the properties appertaining to it by the appellant purporting to be the de jure Mahant against the defendant as a de facto Mahant. The subject matter of the suit was the interest of the defendant in the Dera and its properties and it devolved upon the new Mahant by virtue of his election subsequent to the death of the defendant. As it was in a representative capacity that he defendant was sued and that it was in the same representative capacity that the appeal was sought to be continued against the new Mahant, O. 23, r. 10 will apply. [490B-E]

Rajnam Pillai v. Natraja Desikar A.I.R. 1924 Madras 615, Thirumalai v. Arunachella, A.I.R. 1926 Madras 540 and Roshan Lal v. Kapur Chand, A.I.R. 1960 Punjab, 382, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 159 of 1974.

From the Judgment and Order dated 4-4-1973 of the Punjab and Haryana High Court at Chandigarh in R.S.A. No. 1482 of 1961.

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N. N. Goswamy and Arvind Minocha, for the appellant.

Kapil Sibbal and D. Probir Mitra, for respondents.

The Judgment of the Court was delivered by

MATHEW, J.-This is an appeal by special leave against a decree passed by the High Court of Punjab and Haryana holding that the appeal filed by the plaintiff-appellant has abated and dismissing his suit.

The appellant brought the suit on the allegation that there was one Shiromani Nirankari Dera at Patiala, that this institution had two-branches-one at Landeke in Moga Tehsil and the other at Nanga Kheri in the erstwhile Patiala State, and that he, as mahant-in-charge of the Shiromani Dera at Patiala had the right to manage the properties attached to the Dera at Landeke. The prayer in the plaint was for recovery of possession of the Dera and the properties attached to it.

Som Dass, the defendant, contended that the Dera at Landeke was an independent Dera and that he was in possession of the properties of the Dera as its lawfully appointed mahant.

The trial court decreed the suit. In appeal by the defendant the decree was reversed. Against that decree, an appeal was preferred by the appellant to the High Court. While the appeal was pending in the High Court, Som Dass, the defendant, died on 13-10-1970. No application was made by the appellant to bring on record his legal representatives within the period prescribed. An application was made on 1-2-1971 by the appellant stating that Som Dass died on 26-11-1970 leaving behind him Shiam Dass as his Chela and for impleading him. The correctness of the date of

death of Som Dass was contested by Shiam Dass. The High Court referred the question to the trial Court for enquiry and decision. The trial Court, after taking evidence, found that Som Dass died on 13-10-1970. Thereafter the appellant prayed before the High Court that his application dated 1-2-1971 might be treated as an application for setting aside the abatement of the appeal and the ground for setting aside the abatement was that the appellant did not know about the death of Som Dass at the time he died. The High Court found no substance in the plea that the appellant had no knowledge about the date of the death of Som Dass and held that the appeal had abated and that there was no ground for setting aside the abatement.

The appellant had raised an alternative contention before the High Court that there was no abatement of the appeal even if Som Dass was not impleaded within the period prescribed as he claimed to represent the dera as its duly elected Chela. The High Court held that after the death of Som Dass, Shiam Dass, as his Chela "inherited the sum-total of the rights which earlier vested in Som Dass and when a controversy is raised about such rights, then the appellant was bound to bring on record the legal representatives of the deceased within the time prescribed by law."

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We do not think that the view of the High Court was correct. The suit was filed on the basis that the appellant as the lawfully appointed mahant was entitled to manage the properties of the Dera at Landeke, that the defendant was unlawfully claiming to be the mahant of the Dera and entitled to manage the properties of the Dera, and that the appellant was entitled to be in possession of the properties. As already stated the contention of the defendant was that though the properties belonged to the Dera, he was its lawfully appointed mahant and that the appellant had no right to recover possession of the property of the Dera. When Som Dass died, the interest which was the subject matter of the suit, devolved upon Shiam Das as he was elected to be the Mahant of the Dera and the appeal could be continued under Q. 22, r. 10, of the Civil Procedure Code against the person upon whom the interest had devolved.

Order 22, rule 10 reads:

"R. 10(1) In other cases of an assignment, creation or devolution of any interest during the pendency of suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal there from shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."

This rule is based on the principle that trial of a suit cannot be brought to an end merely because the interest of a party in the subject matter of the suit has devolved upon another during the pendency of the suit but that suit may be continued against the person acquiring the interest with the leave of the Court. When a suit is brought by or against a person in a representative capacity and there is a devolution of the interest of the representative, the rule that has to be applied is Order 22, rule 10 and not rule 3 or 4, whether the devolution takes place as a consequence of death or for any other reason. Order 22, rule 10, is not confined to devolution of interest of a party by death, it also applies if the head of the mutt or manager of the temple resigns his office or is removed from office. In such

a case the successor to the head of the mutt or to the manager of the temple may be substituted as a party under this rule. The word 'interest' which is mentioned in this rule means interest in the property i.e., the subject matter of the suit and the interest is the interest of the person who was the party to the suit.

It was, however, contended on behalf of the respondent that there was no devolution of the interest in the subject matter of the suit on the death of Som Dass, since there was no certainty as to the person who would be elected as mahant to succeed him. The argument was that it was uncertain on the death of Som Dass as to who would become the mahant by election, that it was only when a person succeeded to the mahantship on the death of a previous mahant by virtue of law

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or custom that there would be devolution of interest in the subject matter of the suit and, therefore, Order 22, rule 10, would not be attracted. We see no force in this argument. We are of the view that devolution of the interest in the subject matter of the suit took place when Shiam Dass was elected as mahant of the Dera after the death of Som Dass.

Som Dass was sued in his capacity as a person who claimed (though illegally according to the appellant) as mahant of the Dera. Som Dass contended that he was lawfully appointed as mahant of the Dera. He never set up any claim which was adverse to the Dera or its properties. The suit against Som Dass was not in his personal capacity but in his capacity as de facto mahant. In other words, the suit was for possession and management of the Dera and the properties appertaining to it by the appellant purporting to be the de jure mahant against Som Dass as de facto mahant. The fact that it was after Som Dass died that Shiam Dass was elected to be the mahant of the Dera can make no difference when we are dealing with the question whether the interest in the subject matter of the suit devolved upon him. The subject matter of the suit was the interest of Som Dass in the Dera and its properties and it devolved upon Shiam Dass by virtue of his election as mahant subsequent to the death of Som Dass. And, as it was in a representative capacity that Som Dass was sued and as it was in the same representative capacity that the appeal was sought to be continued against Shiam Dass, Order 22, rule 10 will apply(1). In *Thirumalai v. Arunachella* (2) the Court held that a succeeding trustee of a trustee who filed a suit and thereafter died during its pendency was not legal representative of the predecessor in office. The Court said that where some of the trustees die or retire during the pendency of a suit and new persons are elected to fill their place, it is a case of devolution of interest during the pendency of a suit and the elected persons can be added as parties under Order 22, rule 10 notwithstanding that the period of limitation for impleading them had expired.

In *Roshan Lal v. Kapur Chand* the Court took the view that newly appointed trustees are not legal representatives of the trustees who had filed the suit and thereafter died during the pendency of the suit, that they can be added as parties under Order 22, rule 10 notwithstanding the fact that the period of limitation for an application to

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impleaded them under Order 22, rule 3 had elapsed. The Court said (at p. 384):

"Such an application is obviously not an application under O. 22, R. 3 Civil Procedure Code."

We also see no reason why the High Court should not have granted leave to the appellant to prosecute the appeal.

In the result we reverse the decree of the court below and direct the High Court to dispose of the appeal on merits. We allow the appeal but, in the circumstances, make no order as to costs.

V.P.S.

Appeal allowed.

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JUDIS