

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 6127-6128 OF 2002

RATTAN CHAND & ORS.

.....APPELLANT(S)

Versus

MORI (D) BY L.R. & ORS.

.....RESPONDENT(S)

O R D E R

Defendants 1 to 3 in a suit for declaration and possession filed by the deceased first respondent Mori Devi are the appellants in these appeals by special leave.

2. One Ram Sahai had two wives, Mori Devi and Nihatu. Mori Devi did not have any children. Nihatu had a daughter by name Basanti who was married to Durga. Basanti and Durga had four children, namely, the three appellants herein (defendants 1 to 3) and one daughter Soma Devi, who is the legal representative of deceased Mori Devi. Ram Sahai was the occupancy tenant in respect of the suit land and was entered accordingly in the revenue records. After his death, Mori Devi and Nahuti who succeeded to his estate in equal share were shown as the occupancy tenants.

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However, abruptly the name of Durga was also entered in the revenue records as a non-occupancy tenant. Nihatu died in the year 1983, leaving a will bequeathing her half share in favour of defendants 1 to 3. Durga also died. After the death of Durga, the names of defendants 1 to 3 were entered as the non-occupancy tenants in regard to the entire property including the half share of Mori Devi.

3. When Mori Devi came to know that names of Durga and subsequently names of defendants 1 to 3 were entered as non-occupancy tenants even in regard to her share of land, she filed a suit for declaration and possession on 6.6.1985. The trial Court decreed the suit on 16.12.1986 accepting the claim and case of Mori Devi. However, the appeal filed by the defendants 1 to 3 (appellants herein) was allowed by the first appellate Court by judgment and decree dated 11.4.1989 and the suit was dismissed. Feeling aggrieved, Mori Devi filed a second appeal (RSA No.204/1989) in the High Court of Himachal Pradesh. During the pendency of the said appeal, she died on 7.6.1994. However, no one came on record as her legal representative. The High Court, unaware of the death of Mori Devi, heard the second appeal and allowed it by judgment dated 1.5.1997. Thereafter, defendants 1

to 3 made an

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application to the High Court pointing out that the appellant Mori Devi had died in 1994 itself and there cannot be a decree in favour of a dead person in the absence of any L.R. having come on record. Accepting the said submission, the High Court recalled the order dated 1.5.1997 and dismissed the appeal as having abated. Nearly two years thereafter, in the year 1999, Soma Devi, daughter of Durga, as legatee and successor of Mori Devi, under her will, filed an application to come on record as the legal heir of Mori Devi and restore the second appeal. Though the said application was resisted, the High Court allowed the said application by order dated 1.11.2001 and set aside the abatement, condoned the delay and allowed Soma Devi to come on record subject to payment of Rs.2,000/- as costs. The costs were paid. Thereafter, the appeal was restored to file and heard. The High Court again allowed the second appeal by judgment dated 11.1.2002.

4. Feeling aggrieved, the appellants have filed these appeals by special leave challenging the order dated 1.11.2001 permitting Soma Devi to come on record as the legal representative of the deceased appellant Mori Devi and the judgment dated 11.1.2002 allowing the second appeal.

5. The appellants contend that the abatement ought not to have been set aside after an enormous delay. But we find from the order dated 1.11.2001 that the application was allowed subject to payment of Rs.2,000/- as costs. The learned counsel appearing for the appellants herein stated that 50% of the costs may be given to the High Court Bar Association for purchase of books and the remaining 50% be paid to the Advocates Welfare Fund of the Bar Council, Himachal Pradesh. The costs were accordingly paid and disbursed. In view of the fact that the counsel for the appellants herein specifically agreed and suggested the manner of payment of costs, he is deemed to have agreed and accepted the order dated 1.11.2001 by receiving the cost. Hence, it is not open to the appellants to subsequently challenge the order dated 1.11.2001 which permitted the legal representative of the deceased Mori Devi to come on record in her place and pursue the restored second appeal.

6. As far as merits of the appeals is concerned, the High Court found that Ram Sahai was an occupancy tenant and his name was entered as such in the record. When he

died, it was not disputed that his two widows Mori Devi and Nihatu became the occupancy tenants and, accordingly, their names were entered in the revenue records. The High Court

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also found that without any reason the name of Durga, son-in-law of Nihatu, was also entered abruptly as a non-occupancy tenant. The High Court has examined the material on record and has pointed out that this is case of absolutely 'no evidence'. The High Court was conscious of the fact that if there was any finding of fact based on evidence by the first appellate Court, it should not interfere with such finding. The High Court interfered because it came to conclusion that there was no evidence or reason at all as to why and how the name of Durga was entered as an occupancy tenant. The High court also relied upon several decisions which held that where someone is registered and shown as occupancy tenant, if someone else's name is entered as non-occupancy tenant without any explanation, the first entry should be preferred and not the unexplained subsequent entry. It is in these circumstances, the High Court has reversed the finding of the first appellate Court and restored the finding of the trial Court that Durga was not a non-occupancy tenant. The High Court has also noticed that the defendants 1 to 3 being co-owners cannot at the same time claim to be non-occupancy tenants also.



7. Having regard to all these circumstances, we find that there is no error in the judgment of the High Court in allowing the second appeal. These appeals are, therefore, dismissed.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
January 14, 2010.

.....J.
(SURINDER SINGH NIJJAR)



JUDGMENT