

A MAULVI ISSA QURESHI  
v.  
DISTRICT JUDGE, DEORIA AND ORS.  
AUGUST 16, 1996  
B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Code of Civil Procedure, 1908 : Order 9 Rule 4 and Order 22 Rule 3.*

C *Substitution of L.Rs.—Suit filed by a person impleading himself as co-plaintiff—Suit dismissed on the ground that it was as fraudulent suit—Co-plaintiff filing application of substitution of the son of the dead plaintiff—Held son of the deceased plaintiff were not entitled to be substituted as the suit was already dismissed and became final—When the suit has already become final the question of substitution does not arise—The District Judge committed a manifest error of law in directing substitution and the High Court was not right in declining to interfere with the order.*  
D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11381-82 of 1996.

E From the Judgment and Order dated 15.11.95 of the Allahabad High Court in C.M.R.P. No. 16944 of 1995.

Manoj Swarup and Ms. Lalitha Kohli for the Appellant.

Ms. Sandhya Goswami for the Respondents.

F The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

G These two appeals by special leave arise against the orders of the High Court of Allahabad dated 15.11.1995 & 1.3.1995 made in Revision Petition No. 16944/95 and in CMWP No. 29890/91. The admitted facts are that Ram Nihore, said to be living, laid the suit, impleading Mansari as a co-plaintiff, for perpetual injunction restraining the appellant from possession and enjoyment of the plaint Schedule property. The suit came to be laid on April 25, 1988. The suit was dismissed for default on May 27, 1988.  
H

An application under Order 9 Rule 4, C.P.C. was filed for restoration on May 30, 1988. The appellant filed objections stating that Ram Nihore had already died on September 4, 1979. Therefore, it was a fraudulent suit laid on behalf of a dead person by the co-plaintiff. That application came to be dismissed on May 30, 1988. Subsequently, the co-plaintiff filed an application for substitution of the son of the dead plaintiff on February 6, 1990. The appellant raised objection that since the suit had already been dismissed, no substitution could have been made. Accordingly, Civil Court dismissed the application on February 6, 1990. The respondent carried the matter in revision to the District Judge. The District Judge by his order dated July 6, 1991 allowed the application and directed substitution. When it came to be challenged before the High Court in W.P., the High Court dismissed the same.

The question, therefore, is : whether the respondent is entitled to be substituted in a suit which is already dismissed and has become final? Though Ms. Sandhya Goswami, learned counsel for the respondents sought time again and again, for filing the counter-affidavit, no counter-affidavit has been filed. From the narration of the facts, it is clear that when the suit had come to be filed on behalf of a dead person professing to be alive and co-plaintiff was impleaded in the suit, it would be obvious that the co-plaintiff played fraud upon the Court and misused judicial process. The question then is : whether the substitution of the son of the dead plaintiff in the suit would be permissible? It is axiomatic that the son of the deceased has no better independent right than what the original plaintiff himself had. After filing of the suit on behalf of a dead person and when the suit has already become final the question of substitution does not arise. Therefore, the District Judge committed a manifest error of law in directing substitution and the High Court was not right in declining to interfere with the order.

The appeals are accordingly allowed. No costs.

T.N.A.

Appeal allowed.