

A

RAM BHAJAN SINGH AND ORS.

v.

MADHESHWAR SINGH (DEAD) BY LRS. AND ORS.

APRIL 26, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Code of Civil Procedure, 1908*

C

*Order 22 Rules 3 & 4—Bringing on record legal heirs of deceased—Condonation of—Delay in—Limitation—Not as rigorous as one to condone delay in filing appeal—Could be condoned.*

D

The appellants filed the present suit for declaration that the compromise decree made in an earlier suit (T.S. No. 72/26) was null and void and did not bind them. The trial Court dismissed the suit. On appeal, a finding was recorded that the compromise was not vitiated by fraud but since the defendants Nos. 7 to 9 had no right in the property, the family arrangement in the compromise was not valid and therefore it did not bind the plaintiffs. On second appeal, the High Court held that since the 11th defendant died and application for substitution was not filed within the limitation, the entire appeal stood abated. Hence this appeal by special leave.

E

Allowing the appeal, this Court

F

HELD : 1.1. The property belonged to one G who had 1/6th share and on his demise his widow came into possession as a limited owner in respect of the lands in dispute. She gifted the properties to defendants Nos. 1 and 2 on April 4, 1926, which gave rise to Title Suit No. 72/26 challenging the aforesaid gift. Therein, a compromise was affected between the parties and each of the four branches was given 3 bighas 3 katas, each out of a total extent of 14 bighas, 12 katas. [838-A-B]

G

1.2. In view of the findings of both the trial court as well as the appellate court that no fraud was played, the compromise decree does not get vitiated. [838-D]

H

1.3. The death occurred on July 9, 1973 and the application for substitution was filed on October 17, 1973, after the expiry of nine days of

limitation. The application for substitution was filed two days after the Puja Vacation. It would have been in time, if filed on the day the Court re-opened after Puja Vacation. Thus, the High Court was wholly wrong in refusing to condone the delay of nine days in bringing the legal representatives on record. The explanation for such delay is not as rigorous as one to condone delay in filing the appeal. [838-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2480 of 1979.

From the Judgment and Order dated 28.6.78 of the Patna High Court in S.A.No. 63 of 1972.

Uday Singh, M.P. Jha and R.K. Singh for the Appellants.

D. Goburdhan for the Respondents.

The following Order of the Court was delivered :

The appeal lie in a short compass. The appellants are the legal representatives of defendant Nos. 7 to 9. The respondents plaintiff Nos. 1 and 2, filed T.S. No. 66/58 on October 7, 1958 to declare that the compromise decree made in T.S. No. 72/26 is null and void and does not bind them. The trial Court dismissed the suit. On appeal, while holding the allegations that the compromise was obtained by playing fraud on the plaintiff was not proved, it was allowed on the ground that it does not bind the plaintiff. As stated earlier, the trial court after going into the evidence dismissed the suit holding that the decree was not obtained by fraud and that, therefore, the decree was valid and is binding on them. In T.S. No. 1962/62, the appellate court also recorded the finding that the compromise was not vitiated by fraud, but since defendants Nos. 7 to 9 have no right in the property, the family arrangement in the compromise was not valid and that, therefore, it does not bind the plaintiffs. Accordingly it reversed the decree of the trial court and decreed the suit by Judgment and decree dated September 15, 1971.

The appellants carried the matter in Second Appeal No. 63/72. The single Judge of the High Court by Judgment and decree dated June 28, 1978 dismissed the appeal holding that since the 11th defendant died on July 9, 1973 and the application for substitution was not filed within the limitation, the entire appeal stands abated and accordingly the appeal was dismissed. Thus this appeal by Special Leave.

A Admittedly, the property belongs to one Ganga Bishan who had 1/6th share in the joint family property and on his demise his widow, Daulat Kaur, came into possession as a limited owner in respect of the lands in dispute bearing plot Nos. 132, 133 and 138. Daulat Kaur gifted the properties to the defendants Nos. 1 and 2 on April 4, 1926, which gave rise to the title Suit No. 72/26 challenging the aforesaid gift. Therein, the compromise was affected between the parties and each one of the four branches were given 3 bighas 3 katas each out of a total extent of 14 bighas, 12 katas. Daulat Kaur died on June 27, 1956.

C These facts clearly establish that there as a compromise recorded in the judicial proceedings in T.S. No. 72/26 in which each of the branch was proportionately given @3 bighas 3 katas each. The question then is whether the compromise was vitiated by fraud. Unless this finding is established, decree binds the parties as it was validly recorded in a judicial adjudication and it cannot be set at naught. In view of the findings of both the trial court as well as the appellate court that no fraud was played, the compromise decree does not get vitiated. The question then is whether the second appeal stands abated. It is seen that the defendant No. 11 in the trial court is only one of the persons representing the branch of the defendants No. 9. The other defendants are already representing the estate of the 11th defendant. The death occurred on July 9, 1973 and the application for substitution was filed on October 17, 1973, practically after the expiry of the nine days of limitation. The application for substitution was filed two days after the Puja Vacation. It would have been in tie, if filed on the day the Court re-opened after Puja vacation.

F Under these circumstances the High Court was wholly illegal in finding that the appeal abated, and in refusing to condone the delay of nine days in bringing the legal representatives on record. The explanation of delay is not as rigorous as one to condone delay in filing the appeal. The appeal is, therefore, allowed with the result that the decree in T.S. No. 72/26 stand unaffected.

G G.N.

Appeal allowed.