

SH. BAKSHISH SINGH (DEAD) BY LRS.

v.

ARJAN SINGH AND ORS.

MARCH 12, 1996

[K. RAMASWAMY AND K. VENKATASWAMI, JJ.]

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

*Appeal—Abatement of—Partnership—Suit filed by one partner for dissolution of partnership and rendition of accounts—Dismissal by Trial Court—Dismissal upheld by First Appellate Court—Second appeal—Death of two partners during pendency of second appeal—Legal representatives of deceased partners not brought on record—High Court dismissed the second appeal as having abated against all the respondents including those who have subsequently purchased the interest of the partners—Appeal—Held when the decree is single and indivisible, there cannot be inconsistent decrees as against the deceased respondents and the contesting surviving respondents—As two respondent-partners died pending second appeal, there cannot be any inconsistent decree as against the dead persons and against whom the decree dismissing the suit had become final and other contesting respondents whose rights are to be adjudicated in the second appeal—The High Court has not committed any error of law—The appeal also stand abated as against all the respondents.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1032A of 1979.

From the Judgment and Order dated 12.9.78 of the Punjab & Haryana High Court in R.S.A. No. 477 of 1968.

Mrs. Manjeet Chawla and (V.K. Verma), (NP) for the Appellants.

Prem Malhotra and Piyush for the Respondents.

The following Order of the Court was delivered :

This appeal by special leave arises from the order of the learned single Judge of the Punjab and Haryana High Court made in Second

Appeal No. 477/68 on September 12, 1978.

The admitted facts are that one Mathra Singh, Plaintiff No. 1 and defendant Nos. 1 to 13 were partners of the factory known as Modern Ice Factory at Gurdaspur. A suit was filed for dissolution of partnership and rendition of accounts. The trial Court dismissed the suit. Appeal also was dismissed. While the second appeal was pending, it is not in dispute that two of the partners died. Their legal representatives were not brought on record. Consequently, the High Court dismissed the second appeal as having abated as against all the respondents. Thus, this appeal by special leave.

It is pointed out in the report of the Registry that respondent Nos. 8 and 14(i), pending this appeal, have also died and no steps have been taken to bring the legal representatives on record. It is contended by Smt. Manjeet Chawla, learned counsel for the appellant that the original partners are respondent Nos. 2, 14 and 15. As against them, the appeal has not been abated and the High Court was wrong in its conclusion that the appeal stands abated as against other persons who have subsequently purchased the interest of they partners. It is seen that even pending appeal the 14th respondent, the original partner also died and his legal representatives were brought on record and that respondent 14(i) also died. 8th respondent also died pending appeal.

It is well settled law that when the decree is single and indivisible, there cannot be inconsistent decrees as against the deceased respondents and the contesting surviving respondents. It is seen that two respondent-partners died pending second appeal. Therefore, there cannot be any inconsistent decree as against the dead persons and against whom the decree dismissing the suit had become final and other contesting respondents whose rights are to be adjudicated in the second appeal.

It would, therefore, be clear that the High Court has not committed any error of law. Since the appeal has already got abated as against the deceased respondents, the Court cannot proceed further on merits. Equally, the same situation is confirmed in this appeal also. Since respondent Nos. 8 and 14(i) had already died and their rights have become final; since their legal representatives have not been brought on record and the appeal

stands abated as against them, it would be inconsistent if we go into the merits of the matter as against the contesting respondents in this appeal. Under these circumstances, this appeal also stands abated as against all the respondents.

The appeal is accordingly dismissed. No costs.

Appeal dismissed.