Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7011 OF 2015
(Arising out of S.L.P. (Civil) No. 22129 of 2014)

Shanti Devi & Others ... Appellants

Versus

Kaushaliya Devi ...Respondent

WITH

CIVIL APPEAL NO. 7008 OF 2015
(Arising out of S.L.P. (Civil) No. 22996 of 2014)

J U D G M E N T

Prafulla C. Pant.J.

Civil Appeal No. 7011 of 2015

This appeal is directed against order dated 02.01.2014, passed by High Court of Judicature at Allahabad, Lucknow Bench, whereby said court has dismissed the Writ Petition No. 58 of 2008 (M/S), affirming the order dated 10.10.2007, passed by the Additional District Judge/Special Judge

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Reason:

(E.C.Act), Gonda, in Miscellaneous Case No. 08 of 2006. By said order, the first appellate court condoned the delay of more than eleven years, and allowed the substitution application moved by the respondent, in Civil Appeal No. 124 of 1987 which stood abated on 14.03.1995, and thereafter dismissed in default on 21.03.1997.

2. We have heard the learned counsel for the parties and perused the papers on record.

3. This is the second round of litigation between the parties. In the first round, Ram Narayan, father of respondent Kaushaliya Devi, instituted Original Suit No. 277/66 on 16.12.1966 before Munsif, Gonda. In said suit, Ram Narayan pleaded that the defendant (predecessor in title of the present appellants) was his tenant, and the tenancy was terminated vide notice dated on 02.11.1966. The defendant disputed title of the plaintiff. And after full trial, the suit was dismissed on which, Ram Narayan preferred Civil Appeal No. 107 of 1973. The same was also dismissed on 20.04.1977 with the observation that since issue of ownership of the plaintiff is

disputed, and relationship of landlord and tenant between parties not proved, as such, the plaintiff was at liberty to file fresh suit on the basis of ownership. Thereafter, unsuccessful plaintiff (Ram Narayan) started fresh litigation by filing Original Suit No. 45 of 1980 against Ram kali (predecessor in title of appellants) and Gauri Shanker seeking declaration of title and damages. This suit was also contested, and after recording the evidence and hearing the parties, the same was dismissed vide judgment and decree dated 21.07.1987 (Annexure P-1). On which the plaintiff filed Civil Appeal No. 124 of 1987. During the pendency of the appeal, defendant Ram Kali died, and her legal representatives were substituted. Thereafter appellant Ram Narayan (original plaintiff) died on 14.12.1994. Since no substitution by his heirs was sought in the appeal filed before first appellate court, as such, the appeal stood abated on expiry of ninety days of death of plaintiff-appellant, and ultimately the appeal was dismissed in default on 21.03.1997.

4. After a period of eleven years, on 13.04.2006, substitution application (Annexure P-4) was moved by the

present respondent Kaushaliya Devi along with application (Annexure P-3) under Section 5 of Limitation Act, 1963. The defendants filed objections to said application. After hearing the parties, application for condonation of delay was allowed, vide order dated 10.10.2007 (Annexure P-7), passed by the first appellate court i.e., Additional District Judge/Special Judge (E.C. Act), Gonda. Aggrieved by said order, the present appellants filed Writ Petition No. 58 of 2008 (M/S) before the High Court. The writ petition was earlier allowed ex-parte on 05.07.2013 (Annexure P-10). It appears that writ petition was got restored, and finally dismissed after hearing the parties, vide impugned order dated 02.01.2014, challenged in this appeal.

5. Shri Pradeep Kant, Senior Advocate, on behalf of the appellants (defendants) argued before us that seeking condonation of delay of more than 10 years is nothing but abuse of process of law, and it defeats the very purpose of period of limitation of ninety days provided in Article 120 of Schedule of Limitation Act, 1963. Reliance is placed on behalf

of the appellants in the case of ***Karam Kaur v. Jalandhar Improvement Trust and Others***[1]**,** in support of the above argument.

6. On the other hand, learned counsel for the respondent submitted that the courts below have done the substantial justice as Kaushaliya Devi, daughter of plaintiff, who was a married woman, was living away from his father, as such could not move the substitution application in time, and she remained under impression that her counsel before the first appellate court had taken the necessary steps.

7. Before further discussion, we think it just and proper to mention the relevant provisions applicable to the present case. Rule 3 of Order XXII of Code of Civil Procedure, 1908 (for short "CPC") provides that where the plaintiff dies, and the right to sue survives, the Court, on an application made in that behalf shall cause legal representative of the deceased plaintiff to be made a party and shall proceed with the suit. Rule 11 of Order

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1 (2014) 6 SCC 409

XXII provides that in the application of the Order to appeals word “plaintiff” shall be held to include “appellant”. Sub-rule (2) of Rule 3 of the Order provides that where within the time, limited by law, no application is made under sub-rule (1) the suit shall abate. So far as the limitation is concerned, Article 120 of Schedule of Limitation Act, 1963 provides period of ninety days for moving substitution application. Sub-rule (3) of Rule 9 provides that, the provisions of Section 5 of Indian Limitation Act, shall apply to sub-rule (2), wherein a person claiming legal representative of deceased plaintiff has a right to apply for setting aside the abatement but was prevented by any sufficient cause from continuing the suit.

8. Now, we have to see whether in the present case sufficient reason was shown for condonation of delay, by respondent Kaushaliya Devi for setting aside abatement and seeking her substitution in place of plaintiff/appellant, in the appeal pending before the first appellate court or not. Admittedly, original plaintiff, Ram Narayan died on 14.12.1994. It is not the case of the respondent Kaushaliya

Devi that she had no knowledge of death of her father, nor is her case that she had no knowledge of the litigation pending before the first appellate court. Rather, the application for condonation of delay, which is Annexure P-3 on the record, shows that after death ceremony of her father, she requested one Archana Gupta and her husband to prosecute the matter and they told her that necessary steps had been taken. She further pleaded that her brother Mangal Prasad (son of Ram Narayan) was missing. In their objections (Annexure P-5), the present appellants denied that Mangal Prasad was missing. It is further stated that he is living with his family in Aliganj, Lucknow. It was pointed out on behalf of the present appellants before the first appellate court that Archana Gupta moved an application for substitution claiming herself to be legal heir of the deceased, on the basis of a Will. It is also stated in the objections, supported by affidavit that Archana Gupta was daughter of Ram Kripal, real brother of Ram Narayan. Her application was dismissed on 09.01.2004. In paragraph 19 of the objections, it is stated that same counsel had represented Archana Gupta and respondent Kaushaliya

Devi before the first appellate court. Our attention is drawn to paragraph 4 of the affidavit of Kaushaliya Devi filed with application for substitution (Annexure P-4).

9. Having gone through the papers on record, as discussed above, and keeping in mind the spirit of the provision contained in Rule 3 of Order XXII CPC read with Article 120 of Schedule of Limitation Act, 1963, in our opinion, the first appellate court and the High Court have committed grave error in law in condonation of delay of more than eleven years in moving substitution application, and setting aside the abatement in the present case, particularly when the respondent/daughter of the deceased had full knowledge of death of her father and also of the litigation pending before the first appellate court. Delay cannot be condoned on insufficient grounds and by abusing the process of law. We do not find that any sufficient reason was shown by the respondent, before the courts below to get huge delay of eleven years condoned, for setting aside abatement, and her substitution.

10. Therefore, the appeal succeeds. The impugned order dated 02.01.2014 passed by the High Court, and the order dated 10.10.2007 passed by Additional District Judge/Special Judge (E.C. Act), Gonda, in Miscellaneous Case No. 08 of 2006 are liable to be set aside, and are hereby set aside. No order as to costs.

Civil Appeal No. 7008 of 2015

In view of judgment in Civil Appeal No. 7011 of 2015, this appeal stands disposed of. No order as to costs.

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

New Delhi;

September 18, 2015.

ITEM NO.1A COURT NO.5 SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 7011/2015

SHANTI DEVI & ORS. Appellant(s)

VERSUS

KAUSHALIYA DEVI Respondent(s)

WITH

C.A. No. 7008/2015

Date : 18/09/2015 This appeal was called on for judgment today.

For Petitioner(s) Mr. Pradeep Kant, Sr. Adv.
Mr. Divyanshu Sahay, Adv.
Mr. Rakesh K. Sharma, AOR

For Respondent(s) Mr. Sanjeev Agarwal, AOR
Mr. Deepak Kumar Singh, Adv.
Mr. Parmod Kumar, Adv.

Mr. Nitin Kumar Thakur, AOR

Hon'ble Mr. Justice Prafulla C. Pant pronounced the judgment of the Bench consisting Hon'ble Mr. Justice Dipak Misra and His Lordship.

Civil Appeal No.7011 of 2015 succeeds in terms of the signed reportable judgment.

Civil Appeal No.7008 of 2015 stands disposed of in view of the judgment in Civil Appeal No.7011 of 2015.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed reportable judgment is placed on the file)