

MAHANTH SATYANAND @ RAMJEE SINGH

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v.

SHYAM LAL CHAUHAN AND OTHERS

(Civil Appeal No. 6318 of 2010)

FEBRUARY 08, 2018

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[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

Code of Civil Procedure, 1908: O.XXII, r.5 – Impleadment of legal representative in pending appeal – High Court allowing impleadment applications preferred by rival contenders entitling both the contenders to raise their respective arguments in subject matter of suit without determining as to who is the actual legal representative of the deceased – Propriety of – Held: When a question arises before the Court in a pending matter as to who will come on record as the legal heir of the deceased, the Court shall, before proceeding to decide with the substantive issues involved in the case, first and foremost, shall decide who is the legal representative of the deceased – Without doing so, the Court cannot proceed with the disposal of the case on hand – At the same time, the Court cannot make all the contenders as parties – The aspect of deciding legal representative cannot also be postponed with a view to decide the same at the time of final disposal of the appeal on merits – The statute has clearly mandated that if the question of deciding the legal representative of a legatee arises before an appellate Court, it may direct the subordinate Court to make enquiries by leading evidence if any through the process of trial and record its finding as to who is the legal representative – After considering the finding recorded by the trial Court, the appellate Court can decide and bring on record the legal representative of the deceased – Matter remitted to High Court for determining the issue as per provisions of O.XXII, r.5 of the Code.

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Allowing the appeals and remitting the matter to High Court, the Court

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HELD: 1. The issue of bringing on record the legal representative in a pending appeal has to be dealt with in a when a question arises before the Court in a pending matter as to who will come on record as the legal heir of the deceased, the Court

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- A shall, before proceeding to decide with the substantive issues involved in the case, first and foremost, shall decide who is the legal representative of the deceased manner prescribed under the provisions of Order XXII, Rule 5. When a question arises before the Court in a pending matter as to who will come on record as the legal heir of the deceased, the Court shall, before proceeding to decide with the substantive issues involved in the case, first and foremost, shall decide who is the legal representative of the deceased. It is also well settled that when a party dies at the stage of second appeal and there are rival contenders claiming to be the legal representatives of the deceased, as in the present case, there is a burden cast upon the Court to first decide as to who is the legal representative of the deceased. Without doing so, the Court cannot proceed with the disposal of the case on hand. At the same time, the Court cannot make all the contenders as parties. The aspect of deciding legal representative cannot also be postponed with a view to decide the same at the time of final disposal of the appeal on merits.[Para 10] [526-H; 527-A-C]
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2. It is indisputable that the procedural laws are meant to advance justice. A procedure contemplated under the code which is mandatory in nature shall not be skipped or ignored by the Courts. Whereas, in the instant case, the High Court's approach has diluted the purport of Order XXII, Rule 5 of the CPC. [Para 11] [527-E-F]
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6318 of 2010.

- F From the Judgment and Order dated 24.02.2009 of the High Court of Judicature at Patna in Second Appeal No. 169 of 1993.

WITH

C. A. NO. 6319 OF 2010

- G Nagendra Rai, R. Venkataramani, Sr. Advs., Ms. Perna Singh, Rohit K. Singh, T. Mahipal, Atishi Dipankar, Santosh Kumar, Sukumar, Jitendra Kumar, Prafulla Ranjan Tiwary, Rajiv Ranjan Mishra, Atishi Dipankar, T. Mahipal, G. Umapati, Ardhendumauli Kumar Prasad, Ms. Taruna Ardhendumauli Prasad, Namit Saxena, Nirnimesh Dube, Advs. for the appearing parties.

- H The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. These appeals by special leave are directed against an interim order dated 24.2.2009 passed by the learned Single Judge of the High Court of Judicature at Patna in Second Appeal No. 169 of 1993. In the said appeal, while dealing with I.A. No. 7162 of 1999 and I.A. No. 8089 of 1999, filed by two applicants and each of them claiming to be the sole legal representative of the deceased appellant No.1 before the High Court, the High Court has allowed both the applications of rival contenders and permitted both of them to raise their respective arguments in the subject matter of pending civil suit.

2. The genesis of the case is traceable to a Suit filed by the respondents herein against one Swami Sheo Dharmanand and two others seeking the relief of declaration that they are trespassers and for consequential relief of grant of permanent injunction. Consequent to its dismissal, plaintiffs—respondents filed First Appeal before the Sub-Judge, Bhabhua which was allowed. The aggrieved defendants preferred Second Appeal before the High Court. During the pendency of Second Appeal before the High Court, one of the original defendants i.e. Swami Sheo Dharmanand (Appellant No. 1 before the High Court) died. Afterwards, the appellants herein, filed their separate I.As. in the Second Appeal seeking to implead themselves as actual chela and successor of the deceased. The High Court, by its order dated 2.7.2008 remanded the matter to the trial Court to submit a report under Order 22 Rule 5 of the Code of Civil procedure, 1908 [*hereinafter referred as ‘CPC’ for brevity*]. The relevant portion of the order dated 2.7.2008 passed by the High Court reads:

“It is necessary to determine the question of legal representative of deceased appellant. Order 22 Rule 5 CPC provides procedure for determination of above question. It runs as follows :-

5. Determination of question as to legal representative :-

Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:-

Provided that where such question arises before an appellate Court, that court may, before determining the question, direct any subordinate court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefore, and the appellate court may take the same into consideration in determining the question.

A Thus, in view of the above provision, the matter of determination of legal representative of deceased appellant No.1 Sheo Dharma Nand @ Deo Shankar Tiwary is sent to the lower court i.e. Sub Judge-I, Bhabua who will try the question and return the records to this court along with his findings and evidence, if any, within two months of receipt of this order.”

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3. The trial Court after taking into consideration the relevant issues involved in the case both on factual and legal aspects has given a report dated 4th December, 2008 that Swami Satyanand Maharaj (appellant in Civil Appeal No. 6318 of 2010) is the legal representative of the deceased and sent the report to the High Court. Aggrieved thereby, the applicant (appellant in C.A. No. 6319 of 2010) has filed his objections before the High Court and in response to the same, the other applicant (appellant in C.A. No. 6318 of 2010) has filed counter affidavit. After hearing the parties at length, the High Court has passed the impugned order allowing the I.As of both the applicants and permitted both of them to participate in the pending second appeal proceedings. It is appropriate to extract here Paragraph 19 of the impugned order which is in the following terms:

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“In the aforesaid facts and circumstances, this Court feels it necessary and proper to dispose of all the three applications, namely, I.A. No. 7162 of 1999, I.A. No. 8089 of 1999 and I.A. No.357 of 2005 with a direction that both the applicants, namely, Swami Triyoganand alias Ram Narayan Prasad (applicant of IA No. 7162 of 1999) and Mahanth Satyanand alias Ramjee Singh (applicant of I.A. No. 8089 of 1999) be substituted in place of deceased appellant No.1 Sheo Dharmanad alias Deo Shankar Tewary. Both of them will be entitled to be represented through their respective counsel and also to raise their respective arguments with respect to the subject matter of the suit at the time of final hearing of this second appeal but they shall not be entitled to raise any point which may be contrary to the stand, pleadings and evidence of the original defendant-appellant No.1”.

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4. Now the question that falls for our consideration in these appeals is whether the High Court was right in allowing the applications of both the rival claimants in the pending appeal entitling them to raise their respective arguments in the second appeal, without determining as to who is the actual legal representative of the deceased under Order 22 Rule 5 CPC.

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5. The main contention of the appellants is that the High Court has committed a grave error of law by allowing both the impleadment applications preferred by the rival contenders staking claim to be the genuine legal representatives of the deceased, without determining the question under the prescribed provisions of law as to who is the legal representative of the deceased appellant. The High Court's order is not in consonance with the provisions of Order 22 Rule 5 of CPC and it is unjust that instead of deciding the paramount question, the High Court had simply passed the order entitling both the contenders to raise their respective arguments in the subject matter of Suit. The order of the High Court is perverse, not in the interest of justice and contrary to the settled principles of law.

6. The counsel on behalf of the respondent has argued in support of the order passed by the High Court and submitted that the High Court has rightly allowed both the applications by giving opportunity to contest the appeal.

7. Then the issue that crops up for consideration is, what is the course to be adopted by the Court when such an applications are filed before the Court.

8. The procedural aspect to be followed when an application is filed under Order 22 Rule 5, CPC is no longer res integra as this Court in *Jaladi Suguna (deceased) through Lrs. Vs. Satya Sai Central Trust and Others*, (2008) 8 SCC 521, has interpreted Order 22 Rule 5 of CPC in the following terms:

“Filing an application to bring the legal representatives on record, does not amount to bringing the legal representatives on record. **When an LR application is filed, the court should consider it and decide whether the persons named therein as the legal representatives, should be brought on record to represent the estate of the deceased.** Until such decision by the court, the persons claiming to be the legal representatives have no right to represent the estate of the deceased, nor prosecute or defend the case. **If there is a dispute as to who is the legal representative, a decision should be rendered on such dispute. Only when the question of legal representative is determined by the court and such legal representative is brought on record, it can be said that the estate of the deceased is represented.**”

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The provisions of Rule IV and V of Order XXII are mandatory. **When a respondent in an appeal dies, the court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representatives, as parties to the appeal without deciding who will represent the estate of the deceased and proceed to hear the appeal on merits. The court cannot also postpone the decision as to who is the legal representative of the deceased respondent, for being decided along with the appeal on merits.** The Code clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the court.

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Though Rule V does not specifically provide that determination of legal representative should precede the hearing of the appeal on merits, **Rule 4 read with Rule 11 makes it clear that the appeal can be heard only after the legal representatives are brought on record**".

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(emphasis supplied)

9. Perceiving the present case in the above framework, the High Court, after noticing that two individual applicants have claimed to be the chelas of the deceased Mahanth and were contending to be his legal representatives, has rightly by an order dated 2nd July, 2008 referred the matter to the Subordinate Judge, Bhabhua for determination under Order 22 Rule 5 of CPC. Accordingly, the trial Court decided the question and sent back the matter with its report dated 4th December, 2008. Before the High Court, the rival contender has filed an objection and in response to the same, the other applicant has filed his counter affidavit. Thereafter,

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the High Court, instead of deciding on merits the question of legal representative of the deceased out of the two contenders, has simply substituted both the contenders in the place of the deceased appellant before it.

10. Apparently, the issue of bringing on record the legal representative in a pending appeal has to be dealt with in a manner

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prescribed under the provisions of Order 22 Rule 5. From the context of the settled legal position, it is clear that when a question arises before the Court in a pending matter as to who will come on record as the legal heir of the deceased, the Court shall, before proceeding to decide with the substantive issues involved in the case, first and foremost, shall decide who is the legal representative of the deceased. It is also well settled that when a party dies at the stage of second appeal and there are rival contenders claiming to be the legal representatives of the deceased, as in the present case, there is a burden cast upon the Court to first decide as to who is the legal representative of the deceased. Without doing so, the Court cannot proceed with the disposal of the case on hand. At the same time, the Court cannot make all the contenders as parties. The aspect of deciding legal representative cannot also be postponed with a view to decide the same at the time of final disposal of the appeal on merits. It is significant that the statute has clearly mandated that if the question of deciding the legal representative of a legatee arises before an appellate Court, it may direct the subordinate Court to make enquiries by leading evidence if any through the process of trial and record its finding as to who is the legal representative. After considering the finding recorded by the trial Court, the appellate Court can decide and bring on record the legal representative of the deceased.

11. It is indisputable that the procedural laws are meant to advance justice. A procedure contemplated under the code which is mandatory in nature shall not be skipped or ignored by the Courts. Whereas, in the instant case, the High Court's approach has diluted the purport of Order 22 Rule 5 of the CPC and is contrary to the law laid down by this Court in *Jaladi Suguna* (supra). Such an approach of the High Court cannot be sustained.

12. Although we are apprised of the fact that alleged legal representatives relying on certain customs to prove whether a *Grihastya* could be a *Guru* under the relevant *sampradaya*. We need not concern our self with the aforesaid findings on merit given by the trial court at this stage. It is for the High Court to consider the aforesaid report of the trial Court and determine the disputed question of fact. It may not be out of context to note that the determination under Order XXII Rule 5 of CPC is summary in nature and for limited purpose. Order passed on the impleadment applications, determining a particular person as legal representative has no effect of final decision or operates as *res-judicata*

A between the legal representatives as to the question of who should ascend as *Guru*. At the cost of repetition, we may note that the determination by the High Court would be limited to the question, as to who should be brought on record in the place of deceased for the purposes of continuing the suit alone, and nothing beyond that.

B 13. In view of the foregoing reasons, we set aside the order of the High Court and remit the matter back to the High Court for determining the issue as per the provisions of Order 22 Rule 5. The High Court shall decide the question on merits as to who is the legal representative of the deceased Swami Sheo Dharmanand on the basis of the reports submitted by the trial Court and also taking into account any objections or material
C which the parties rely upon. Only thereafter, the High Court shall proceed with the hearing of second appeal. We request the High Court to take up the matter as early as possible and dispose of the same expeditiously in accordance with law.

D 14. Before parting with the appeals, we make it clear that we have not expressed any opinion on the merits of the case. Any observation made by us in this judgment should not be construed as an expression of this Court and the High Court has to deal with the same in accordance with the provisions of law.

E 15. The appeals are allowed in the above terms. Consequently, all the pending applications, if any, shall also stand disposed of. No costs.