2022 LiveLaw (SC) 581

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; J., B.V. NAGARATHNA, J.
CIVIL APPEAL NO. 2397 & 2398 of 2022; July 11, 2022
Delhi Development Authority *Versus* **Diwan Chand Anand & Ors.**

Code of Civil Procedure, 1908; Order XXII Rule 1 - 4 - While considering whether the suit/appeal has abated due to non-bringing the legal representatives of plaintiffs/defendants or not, the Court has to examine if the right to sue survives against the surviving respondents - Court has to consider the effect of abatement of the appeal against each of the respondents in case of multiple respondents. *Referred to Venigalla Koteswaramman vs. Malempati Suryamba, (2021) 4 SCC 246 (Para 9- 9.2)*

Property Law - Co-ownership - The co-owner is as much an owner of the entire property as a sole owner of the property. No co-owner has a definite right, title and interest in any particular item or a portion thereof. On the other hand, he has right, title and interest in every part and parcel of the joint property. He owns several parts of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner in the property. It is observed that, therefore, one co-owner can file a suit and recover the property against strangers and the decree would enure to all the co-owners. *(Para 9.4)*

For Appellant(s) Mr. Sanjay Poddar, Sr. Adv. Mr. Vishnu B. Saharya, Adv. Mr. Viresh B. Saharya, Adv. For M/s. Saharya & Co., AOR

For Respondent(s) Mr. Pramod Dayal, AOR Mrs. Meera Mathur, AOR Mr. Bhupesh Kumar Pathak, Adv. Mr. Nikunj Dayal, AOR Ms. Puja Sharma, AOR Mr. Anil Grover, Adv. Mr. Karunakar Mahalik, AOR Mr. Satish Kumar, Adv. Mr. Sabendra Kumar, Adv. Roopam Rai, Adv.

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned order dated 09.07.2007 passed by the High Court of Delhi in RFA No.280 of 2001 and the subsequent order dated 13.01.2012 passed by the High Court in R.P. No.314 of 2008 in the very same RFA No.280 of 2001, the original appellant before the High Court – Delhi Development Authority ('DDA' for short) has preferred the present appeals.

2. The facts leading to the present appeals in a nutshell are as under:

The two plaintiffs, namely, Shri Diwan Chand Anand and Smt. Chanan Kanta Anand claiming to be the co-owners of the suit property filed the suit before the Civil Court/learned Trial Court for declaration and permanent injunction. The suit was filed challenging the acquisition proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'). In the plaint defendant nos. 8 to 39 were impleaded alleging to be co-shares as proper parties to the suit. The original plaintiff no.2, Smt. Chanan Kanta Anand, was the wife of original defendant no.8 – Shri Dharam Chand Anand. On the demise of the husband and wife (original plaintiff no. 2 & defendant no. 8) their children were substituted both as plaintiff nos. 2(i) to 2(x) and defendant nos. 8(i) to 8(x). The suit was contested by the original defendant nos. 1 to 5 and 7 including the appellant DDA. They filed the written statement controverting the claim of the plaintiffs.

The suit was resisted on the ground that the Civil Court had no jurisdiction with respect to a challenge to the acquisition proceedings under the Land Acquisition Act. Other defendant nos. 8 to 39 did not file any written statement and they were proceeded exparte vide order dated 22.03.1983 and 06.10.1983.

2.1 The learned Trial Court initially framed four issues as under:

"Whether the notification dated 16.01.1969 under Section 6 of the Land Acquisition Act with respect to the land in dispute is illegal due to nonsatisfaction of the appropriate authority as to the existences of the public purpose? OPP

2. Whether the defendants withdrew from the acquisition proceedings? OPP

3. What is the effect of Letter dated 10.01.1967 and February, 1968 filed as Annexure D and G to the Plaint? OPP.

4. Relief"

2.2 That thereafter one additional preliminary issue was framed on 12.12.1995 as under:

"Whether Civil Court has jurisdiction to go into the validity of the notification under Section 4 and 6 under Land Acquisition Act?"

2.3 By judgment and decree dated 12.01.2000, the learned Trial Court decreed the suit. It is the case on behalf of the appellant – DDA that despite the learned Trial Court giving a finding that the Civil Court had no jurisdiction to go into the question of validity and legality of the notification under Section 4 of the Act, it decreed the suit and held that the notifications in question ceased to exist although the notification under Section 48 of the Act had not been issued. The contesting defendants were restrained from dispossessing the plaintiffs and other co-owners land so notified for acquisition.

2.4 Feeling aggrieved and dissatisfied by the learned Trial Court, DDA preferred the appeal before the High Court being RFA No.280 of 2001. The original plaintiff no.1 was arrayed as Respondent No.38 whereas LRs of plaintiff no.2 and defendant no.8 were arrayed as Respondent no.39 (2 – 10), and other defendants 9-39 were arrayed as Respondent nos. 7-37 in the appeal. The appeal was admitted for hearing. The original plaintiff/respondent nos. 38 & 39 were represented by counsel. That some of the respondents (original defendants) out of respondent nos. 7 to 37 (out of original defendant nos. 9 to 39) were not served as some of them had died. By order dated 09.07.2007 the Division Bench of the High Court dismissed the entire appeal as having abated by observing as under:

"Many respondents have died during the pendency of the appeal but no steps have been taken by the appellant to bring their Legal Representatives on record.

This appeal accordingly stands abated."

2.5 That the appellant – DDA filed Review Petition No.314 of 2008 seeking review of the order dated 09.07.2007 dismissing the appeal as having abated. The High Court issued notice on 03.09.2008 which remained unserved till the decision in the impugned order dated 13.01.2012. In the meantime, the original plaintiff no.1 Shri Diwan Chand Anand was reported to have expired on 16.11.2010 and after ascertaining about his legal representatives, application for substitution, being CM No.22449 of 2011 was filed on 08.11.2012, which also remained pending. By the impugned order dated 13.01.2012 the

High Court has dismissed the review application and has refused to recall the order dated 09.07.2007 dismissing the appeal as having abated. The original order passed by the High Court dated 09.07.2007 dismissing the main appeal as having abated and the subsequent order dated 13.01.2012 dismissing the review application and refusing to recall the order dated 09.07.2007 are the subject matter of the present appeals.

3. Shri Sanjay Poddar, learned Senior Advocate has appeared on behalf of the appellant – DDA and Shri Shyam Divan, learned Senior Advocate has appeared on behalf of the contesting respondent nos.33 and Shri Sunil Gupta, learned Senior Advocate has appeared on behalf of respondent nos. 3 to 40.

4. Shri Poddar, learned Senior Advocate appearing on behalf of the appellant – DDA has vehemently submitted that the High Court has dismissed the appeal as abated solely on the ground of failure on the part of the appellant to bring on record the legal representatives of certain respondents without going into the question as to whether the presence of such persons was necessary and also without deciding the application being CM No.22449 of 2011 (for substitution of legal representatives of original plaintiff - Shri Diwan Chand Anand).

4.1 It is submitted that as a matter of fact the appeal has not been dismissed on the ground of non-substitution of plaintiffs, who are necessary parties. It is contended that the appeal as a whole cannot be treated as abated on failure to substitute the legal representative of such defendants who even did not file written statement and even remained exparte, in view of the provisions of Order 22 Rule 4(4) of the Code of Civil Procedure (for short 'CPC').

4.2 It is further urged that the High Court has dismissed the appeal on hyper technical ground without examining the core issue, as to, whether, the Appeal can be heard in the absence of such respondents/defendants or not.

4.3 It is also submitted that even during the course of the hearing of the SLPs, the contesting respondents have argued that said two plaintiffs filed the suit on behalf of other coowners/defendants and they were prosecuting the suit on their behalf though these defendants remained ex-parte and thus the learned Trial Court rightly passed the decree in their favour. Reliance was placed on behalf of the appellants upon the decision of this Court in the case of **A. Viswanatha Pilliai and others vs. The Special Tehsildar for Land Acquisition No.4 and others, (1991) 4 SCC 17** in support of the submission that one co-owner can prefer and prosecute the legal remedies for and on behalf of other co-owners. It is submitted that applying the same analogy, the same co-owner can also defend and represent the entire estate of other coowner. That if the entire estate is represented by the plaintiffs in the suit, then they are deemed to have represented the same in the appeal. It is submitted that the respondents/defendants who died did not file written statement and remained ex-parte and therefore they were not necessary parties for adjudication of the appeal. Reliance is placed upon the decision of this Court in the case of **Mata Prasad Mathur vs. Jawala Prasad Mathur, (2013) 14 SCC 722 and Kanhiya Lal vs. Rameshwar, (1983) 2 SCC 260 (para 6).**

4.4 It is further submitted that it is a well settled law that whether the appeal abets as a whole has to depend upon facts of each case and no straight formula is applicable since each case has its own peculiarities. It is submitted that the Hon'ble High Court has

failed to examine this important and vital aspect which was required to be considered as observed and held by the Constitution Bench Judgment of this Hon'ble Court in the case of **Sardar Amarjit Singh Kalra vs. Pramod Gupta, (2003) 3 SCC 272 (para 26).**

4.5 It is urged that in the aforesaid Constitution Bench Judgment this Hon'ble Court has further held that the provisions of Order 22 Rule 4 CPC are required to be applied liberally with the object of protecting the rights of the parties and not to destroy the same. It is contended that when the land is sought to be acquired and meant for a public purpose as in the instant case interest of justice warrants that the appeal be heard on merits in a time bound manner and may not be dismissed as abated.

4.6 Now so far as on the issue of abatement of present SLPs/appeals on the alleged ground of non-impleadment of the LRs of Jagdish Anand in the present SLPs/appeals who was one of the legal heirs of original plaintiff no.2 and defendant no.8, it is submitted that Jagdish Anand was one of the legal representatives of original plaintiff no.2 and defendant no.8, out of the 10. That the other legal representatives are already on record and therefore as the estate is represented by the other legal representatives the present appeals can proceed in the presence of the other legal representatives who are already on record as all of them represent the estate of their father and mother.

4.7 So far as the submission on behalf of the contesting respondents that on the issue of finality of judgment/decree on account of non-substitution of legal representatives and/or there may be conflicting or inconsistent decrees is concerned, it is submitted that as such the judgment and decree passed by the learned Trial Court is a nullity being without jurisdiction as this Hon'ble Court in the case of **State of Bihar vs. Dharender Kumar, (1995) 4 SCC 229** has held that the Civil Court has no jurisdiction to entertain a civil suit in respect of the Land Acquisition Proceedings/Notifications and cannot pass an injunction order to restrain the government from taking possession. It is submitted that the decree being a nullity the validity of such a decree can be questioned whenever and wherever it is sought to be relied upon, even at the stage of execution and even at the collateral stage of proceedings. It is submitted that the defect of jurisdiction as to the subject matter of the suit land, strikes at the root of the matter and such a defect cannot be cured even by consent of the parties.

4.8 Now in so far as the submission on behalf of the contesting respondents, that there is a huge delay in challenging the original order dated 09.07.2007 passed in the First Appeal, it is submitted that the appellant was prosecuting the Review Application which was filed in the year 2008 which remained pending till 13.01.2012. That the delay in preferring the review was condoned by the High Court. Therefore, the appellant is entitled to seek exclusion of the period during the pendency of the review petition and the same has been challenged in the present proceeding. It is submitted that the submission of the respondents in this regard is liable to be rejected. This is because as observed and held by this Court in the case of **Esha Bhattacharjee vs. Managing Committee of Ragunathpur Nafar Academy and others, (2013) 12 SCC 649** as well as in the recent decision in the case of **Radha Gajapathi Raju & Ors. vs. P. Maduri Gajapathi Raju & Ors. In Civil Appeal No.6974-6975/2021 arising out of SLP (C) No.3373-3374 of 2020 decided on 22.11.2021** pendency of the proceedings in another Court can be said to be a sufficient ground for condonation of delay.

Making above submissions and relying upon the above decisions, it is prayed to allow the present appeals, set aside the orders passed by the High Court dismissing the appeal as a whole as having abated due to non-bringing the legal representatives of some of the respondents – original defendants on record and to direct to decide the main appeal on merits.

5. While opposing the present appeals, learned Senior Advocates appearing on behalf of the contesting respondents, have, firstly, submitted that as such there is a huge delay of 1811 days in filing Civil Appeal No.2398 of 2022 against the main order dated 09.07.2007 with no plausible justification and explanation. As a matter of fact, even the review petition before the High Court was barred by limitation by 378 days.

5.1 It is further submitted by Learned Senior Advocates on behalf of the Contesting Respondents that in order to appreciate the controversy before the learned Trial Court, few facts are required to be considered which are as under:

"1. Plaintiffs 1 & 2, Diwan Chand Anand and Smt. Chanan Kanta Anand, along with Sh. Dharam Chand Anand, Sh. Gian Chand etc. were migrants from Lahore, Pakistan. The said plaintiffs along with Sh. Dharam Chand Anand & others, in and around 1947-48 , purchased the disputed land, situated in Village Kharera, Tehsil Mehrauli, bearing Khasra no.393, 394 & 395, admeasuring 30 bighas 6 biswas of land, along with super structure, from one Sh. Mohd Ishaq. Sh. Dharam Chand Anand re-started his business of body building on Trucks by constructing a factory on the said parcels of land in the name of Anand Automobiles and supplied bus bodies to the Military.

2. Since Mohd Ishaq migrated to Pakistan, the properties were claimed by Custodian of Evacuee Properties. Representation was made by the Plaintiffs & others to de-notify the same as Evacuee Property. The same was duly considered and on 5th December 1953, the Custodian of Evacuee Properties confirmed the sale of the said land with the superstructure, in favour of Plaintiffs & other co-sharers. Sale Certificate was filed with the plaint. The said land is situated within "Lal Dora".

3. Subsequently, two Deeds of Conveyance with respect to 30 bighas 6 biswas of land, were executed by the President of India, in the year 1962, in favour of the said Plaintiffs along with Sh. Dharam Chand Anand, Sh. Gian Chand & other co-sharers. The deeds neither specified the shares of he said six persons in the parcels of land nor allocated or demarcated any portions of the land between them.

4. In the year 1964, Notification under Section 4 of the Land Acquisition Act, 1894 was issued in respect to number of parcels of land including the aforesaid land.

5. On 1st May, 1964, the co-sharers filed objections against the notification and nothing was heard for almost 5 years. On 19th September, 1966, one of the co-sharer of the said property, made representation against the proposed acquisitions to GoI.

6. On 23th December, 1966, the Central Govt wrote to the Lt. Governor of Delhi to release the land comprised in Khasra nos. 393, 394 & 395, covered by notification dated 21st March, 1964

7. Release Policy: On 7th January, 1967, Central Govt. made a policy decision that lands which were isolated and situated amidst built up areas and not required for public purposes were to be released from acquisition. On 10th January, 1967, the Central Govt. wrote to one of the co-owners, viz Shiv Raj Bahadur that Delhi Administration has been directed to de-notify the land in dispute.

8. Thereafter, on 6th February, 1967, the Lt. Governor of Delhi wrote to Central Govt. confirming necessary draft to de-notify the land to ensure directions.

9. Again on 10th October 1967, one of the co-sharer made another representation requesting for release of land.

10. On 9th February 1968, the GoI wrote to Delhi Administration that decision in letter dated 23.12.1966 stands and directed to de-notify the parcels of land, which are subject matter of the SLPs.

11. However, on 16th January, 1969, Notification under Section 6 of the Land Acquisition Act was issued with respect to the land aforesaid.

12. Two out of the six persons, in whose favour the Deeds of Conveyance were executed, viz Dewan Chand Anand & Chanan Kanta Anand w/o Dharam Chand Anand, filed a suit in the High Court of Delhi, in the year 1974, seeking declaration that the Notification dated 21.03.1964 issued under Section 4 of the Land Acquisition Act stands withdrawn and or cancelled/waived and that the Section 6 Notification is mala-fide, null and void, inoperative in law and without and or in excess of jurisdiction and acquisition. It was inter alia the plea of the plaintiffs in the suit, that the Central Government, upon being approached by some of the owners of the land, who were impleaded as defendants, had by a communication to the then Delhi Administration stated that the subject land was not required for the stated purpose and thus the Notification under Section 6 was bad and without application of mind.

13. The suit was instituted by 2 plaintiffs i.e. 2 of the co-owenrs. However, out of the remaining 4 persons, in whose favour conveyance deeds were executed, 3 had already died and accordingly in the said suit, Dharam Chand Anand, the co-owner and the legal heirs of the remaining 3 co-owners had to be and were also impleaded as defendants, as being proper parties, besides the Land Acquisition Authorities and DDA."

5.2 It is submitted that the other owners of the land impleaded as defendants, did not contest the suit, as the suit was in mutual interest. A preliminary issue, namely, whether a civil suit impugning the notifications under Sections 4 & 6 of the Act is maintainable was decided against the plaintiffs. However, ultimately, the suit was decreed vide judgment and decree dated 12.01.2000 by which a decree of declaration was passed holding that the notifications under Sections 4 & 6 of the Act had ceased to exist even before filing of the suit and the suit lands stood released from the ambit and scope of the notifications. The learned Trial Court also passed a decree of permanent injunction restraining the official defendants from dispossessing the plaintiffs and other co-sharers from the suit property. It is submitted that thereafter in an appeal preferred by DDA alone, a number of opportunities were given to bring the legal representatives (LRs) of some of the respondents on record. But the DDA failed to bring on record the LRs of many of the respondents who died. It is submitted that, at one point of time, the suit was dismissed for nonprosecution which was later restored. Several of the five respondents i.e. the original purchasers of the lands and their heirs died. Even the plaintiff – original plaintiff no.1 – respondent died on 16.11.2010. Though opportunities were given for substitution of LRs. They were not substituted. It is submitted that in these circumstances, the High Court vide final order dated 09.07.2007 dismissed the appeal as abated. It is submitted that owing to the original plaintiff no.1 – respondent dying and also a number of other private respondents dying, the High Court in the said order, appears to have not given their details. It is submitted that however, it is not in dispute that a large number of private respondents did die during the pendency of the appeal and the LRs were not brought on record despite more than thirty opportunities being given to the DDA.

5.3 Now so far as the main issue on merits, that is, whether on the non-substitution of legal representatives of some of the respondents - owners of the land and/or whether on demise of the some of the respondents during the pendency of the first appeal and the appellant therein not bringing the LRs on record despite repeated opportunities, whether

the entire appeal stood abated or only in so far as the particular deceased respondents, it is vehemently submitted by the learned Senior Advocate for the contesting respondents that there would be conflicting decrees qua the respondents who are already served and whose LRs are brought on record and qua the deceased respondents whose legal representatives are not brought on record. It is submitted by the learned Senior Advocate that decree dated 12.01.2000 will be in favour of the legal representatives of all the deceased respondents and if the appeal succeeds in High Court, there will be conflicting decrees since the property is jointly owned and the decree is inseparable or inseverable as the property remains undivided with each party having right, title and interest in the entire property.

5.4 It is submitted that factually there were two deeds of conveyance in respect of the entire land in favour of six owners, without demarcating their respective shares. Thus, in law each of the six owners or their heirs were the owners of the entire land having right, title and interest in every part and parcel of land along with others and it cannot be said that the said owners were exclusive owners of any portion of the suit lands. It is submitted that in the case of **K. Vishwanathan Pillai versus Special Tehsildar for Land Acquisition No.IV, (1991) 4 SCC 17,** it has been held that one of the co-owners can file a suit and recover the property against the stranger and the decree would enure to the benefit of all the co-owners. It is submitted that no co-owner has right, title and interest in any of the item or portion of the property but has a right, title and interest in every part and parcel of the joint property.

5.5 It is submitted that in the present case the learned Trial Court vide judgment and decree had decreed that firstly, the notifications had ceased to exist even before filing of the suit and therefore, the suit land stood released from the scope of the said notifications. Secondly, the permanent injunction was granted in favour of the plaintiffs and private respondents (co-sharers) and against the land acquisition authorities as well as the DDA, where the DDA was restrained from dispossessing them. It is submitted that considering the aforesaid facts of the case, in the absence of legal representatives of the deceased respondents, the decree in respect of the suit property would become final vis-à-vis the said persons. But in the present proceedings in respect of the self-same suit property are allowed to continue as against the other respondents, the enforcement of the decree consequent to the possible success of the proceedings would lead to conflict of decrees not permissible in law. The relief of permanent injunction in favour of the deceased respondents would continue to be in force, whereas it would not be in force as against the respondents. This also will result in passing of two conflicting decrees which shall be incapable of enforcement.

5.6 It is submitted that the present is the case of “joint and indivisible decree”/“joint and inseverable or inseparable decree”. Hence when there is omission or lapse or failure to bring on record the LRs of one or more deceased respondents on time, it would be fatal and would require the appeal to be dismissed in toto and it would result in abatement of entire proceedings. Otherwise, inconsistent or contradictory decrees would result with respect to same subject matter vis-à-vis the others.

Making the above submissions it is vehemently submitted that the High Court has rightly dismissed the entire appeal as having abated and the same is not required to be interfered with by this Court.

6. Making above submissions and relying upon the decisions of this Court in the case of **State of Punjab vs. Nathu Ram, AIR 1962 SC 89**; **Hemareddi vs. Ramachandra, (2019) 6 SCC 756**; **Sunkara Lakehminarassama vs. Sagi, (2019) 11 SCC 787** and the recent decision of this Court **Venigalla Koteswaramman vs. Malempati Suryamba, (2021) 4 SCC 246,** it is prayed to dismiss the present appeals.

7. We have heard learned counsel for the respective parties at length.

8. At the outset, it is required to be noted that by order dated 09.07.2007, the High Court dismissed the First Appeal preferred by the appellant herein as having abated on the ground that with respect to some of the original defendants – respondents in appeal who died, their legal representatives were not brought on record. Thus, on non-bringing the legal representatives of some of the respondents who died during the pendency of the appeal on record, the High Court dismissed the appeal as a whole as having abated. The said order dated 09.07.2007 reads as under:

"R.F.A. No.280/2001

Many respondents have died during the pendency of the appeal but no steps have been taken by the appellant to bring their Legal representatives on record. This appeal accordingly stands abated."

8.1 Thereafter the appellant preferred the review application in the year 2008 which has been dismissed by the High Court by the impugned order dated 13.01.2012. At this stage, it is required to be noted that there was a delay in preferring the Review Application which came to be condoned by the High Court. That subsequently the appellant herein – DDA – original appellant, preferred the present two appeals, one, challenging the original order dated 09.07.2007 dismissing the appeal as a whole as having abated and the second, challenging the order dismissing the review application. It is sought to be contended on or behalf of the contesting respondents that there is a huge delay in preferring the appeal challenging the order dated 09.07.2007 and therefore present Appeal may not be entertained. However, the appellant was bona fide prosecuting the review application. That after dismissal of the review application in which the appellant prayed to review and recall the order dated 09.07.2007, that the appellant has preferred two separate appeals, one, challenging the dismissal of the review application and another, challenging the original order dated 09.07.2007. Therefore, once the appellant was bona fide prosecuting the review application, it was justified in waiting for the outcome of the Review Application. If, without waiting for the outcome of the review application, the appellant would have preferred the appeal at that stage, the appellant would have been nonsuited on the ground of the pendency of the review application and the appellant would have been told to wait till the outcome of the review application. Therefore, in the facts and circumstances of the case the time taken in prosecuting the review application is to be excluded and the appeal preferred challenging the order dated 09.07.2007 is to be considered on merits. Therefore, the objection on behalf of the contesting respondents not to consider the substantive appeal challenging the order dated 09.07.2007 on merits is hereby overruled and we may proceed to consider the order dated 09.07.2007 dismissing the appeal as a whole as having abated on merits.

8.2 Before we consider the order dated 09.07.2007 on merits the relevant pleadings and the necessary averments in the plaint which would have a direct bearing on the controversy in the present appeal are required to be referred to. It is required to be noted and it is not in dispute that the suit was filed by only two co-owners and rest of the

co-owners/cosharers were joined as defendants as proper parties. According to the original plaintiffs, the land in question was owned jointly by the original plaintiffs and the other cosharers which can be culled out from the following averments in the plaint:

“4. That by order dated 5th December, 1953, the Custodian of Evacuee Properties confirmed the sale regarding the said land in favour of the Plaintiffs and the other co-sharers on condition that they will pay the amount of Rs. 65,399.00 to the Custodian of Evacuee Properties. That amount of Rs. 65,339.00 was paid to the Custodian by the Plaintiffs and other Co-sharers.

5. That on the 26th April, 1962, the Custodian of Evacuee Properties issued Sale Certificates regarding the said land in favour of the Plaintiff and the other cosharers. A copy of the Sale Certificate is attached herewith as Annexure "B".

7. That after the purchase, the Plaintiffs and the other cosharers began to reside on land bearing Khasra No. 395 and some of the co-sharers made a number of improvements and constructions from 1947-48 to 1963 in the land comprised in the said Khasra and some cosharers also set up an Automobile Factory for the manufacture of automobiles and ancillary parts and body building for mechanically propelled vehicles, in the said land.

11. That on 1st May, 1964, the co-sharers of this property filed objections against the said Notification and thereafter for almost 5 years, no hearing was fixed for the said objections and no notice of any kind was received by any of the cosharers.

12. That on 19th September, 1966, Mrs. Shiv Raj Bahadur, who is one of the co-sharers of this property, made a representation against the proposed acquisition to the Government of India, through the Hon'ble Minister Shri Mehar Chand Khanna of the Ministry of Works & Housing. A copy of the representation made, is attached herewith as Annexure "C".

44. That the Plaintiffs and the other co-sharers have all along been harassed for reasons unknown, for acquiring the said property by the Local Administration in spite of two specific directions and decisions of the Central Government to denotify the said property.

45. That the legal representatives of the cosharers who had died, were entitled to be heard and although it was brought to the notice of the Land Acquisition Collector that there were legal representatives of the deceased owners, but they were not given any opportunity of being heard, and no notice was issued to them, therefore, the entire proceedings are vitiated.

47. That Defendants nos. 8 to 39 are co-sharers in the land in dispute and have been impleaded as proper parties to the suit”

8.3 That the plaintiffs being co-owners/co-sharers of the entire suit land in question prayed for the following reliefs:

“(a) It is declared that the-entire proceedings adopted under Section SA of the Land Acquisition Act are malafide, illegal and incomplete violation of the letter and spirit of. the Land Acquisition Act and is contrary to the principles of natural justice, fair-play, equity and good conscience.

(b) It is declared that the Notification no. F.19(93-A)/63- L&H(ii) dated 21st March, 1964 issued under, Section 4 of the Land Acquisition Act stands withdrawn and/ or cancelled and waived by your own conduct.

(c) It be declared that the Notification No. F.19(93-A)/63- L&H dated 16th January, 1969 issued under Section 6 of the Land Acquisition Act is malafide, illegal, null and void, ultra vires, inoperative in Law and without jurisdiction and/ or in excess of jurisdiction.

(d) A permanent injunction be issued against the Defendants not to dispossess the Plaintiffs and the other co-sharers from the property and land bearing Khasra no. 395, 394 and 708/393 of Village Kharera.

(e) An ad interim ex-parte injunction in terms of the proceedings prayer.

(f) The costs of the suit be allowed to the Plaintiff against the Defendants.

(g) The Defendants be ordered to pay to the Plaintiffs the cost of incidentals.

(h) The Court may pass such other and further orders as may be just, proper and necessary under the circumstances of the case."

8.4 Thus, from the aforesaid it can be seen that the original plaintiffs – two co-owners/co-sharers of the entire land in question fought with respect to the entire land belonging to the plaintiffs and the co-owners jointly. It can be said that the original plaintiffs instituted the suit for themselves as well as for and/or on behalf of the other co-owners – co-sharers with respect to the entire land jointly owned by all of them. Thus, it can safely be held that the entire estate was represented through original plaintiffs in which even the co-sharers/coowners were also joined as defendants as proper parties. Therefore, even when the learned Trial Court passed the judgment and decree, it passed the judgment and decree with respect to the entire land and even granted the permanent injunction to protect the ownership and protection of the plaintiffs as well as the other co-sharers over the suit land. In light of the above factual scenario the order passed by the High Court dated 09.07.2007 in dismissing the first appeal as a whole as having been abated on not taking step to bring on record the legal representatives of some of the original defendants/respondents in the appeal is required to be tested and/or considered in light of the settled legal principles.

9. While considering the impugned order passed by the High Court dated 09.07.2007, dismissing the appeal as having abated, the law on abatement and on Order 22 CPC is required to be discussed. Order 22 CPC fell for consideration before this Court in the recent decision in the case of **Venigalla Koteswaramman (supra)** in which this Court considered in detail the earlier decisions of this Court in the case of **Nathu Ram (supra)** as well as the other decisions including the later decision in the case of **Hemareddi (supra).** The relevant discussion on Order 22 CPC in paragraphs 42 to 44.8 are extracted as under:

"42. The rules of procedure for dealing with death, marriage, and insolvency of parties in a civil litigation are essentially governed by the provisions contained in Order 22 of the Code.

42.1. Though the provisions in Rule 1 to Rule 10A of Order 22 primarily refer to the proceedings in a suit but, by virtue of Rule 11, the said provisions apply to the appeals too and, for the purpose of an appeal, the expressions "plaintiff", "defendant" and "suit" could be read as "appellant", "respondent" and "appeal" respectively.

42.2. Rule 1 of Order 22 of the Code declares that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. When read for the purpose of appeal, this provision means that the death of an appellant or respondent shall not cause the appeal to abate if the right to sue survives.

42.3. Rule 2 of Order 22 of the Code ordains the procedure where one of the several plaintiffs or defendants dies and right to sue survives to the surviving plaintiff(s) alone, or against the surviving defendant(s) alone. The same procedure applies in appeal where one of the several appellants or respondents dies and right to sue survives to the surviving appellant(s) alone, or against the surviving respondent(s) alone. The procedure is that the Court is required to cause an entry to that effect to be made on record and the appeal is to proceed at the instance of the surviving appellant(s) or against the surviving respondent(s), as the case may be.

42.4. However, by virtue of Rule 4 read with Rule 11 of Order 22 of the Code, in case of death of one of the several respondents, where right to sue does not survive against the surviving respondent or respondents as also in the case where the sole respondent dies and the right to sue survives, the contemplated procedure is that the legal representatives of the deceased respondent are to be substituted in his place; and if no application is made for such substitution within the time limited by law, the appeal abates as against the deceased respondent.

42.5. Of course, the provisions have been made for dealing with the application for substitution filed belatedly but the same need not be elaborated in the present case because it remains an admitted fact that no application for substitution of legal representatives of Defendant 2 (who was Respondent 3 in AS No. 1887 of 1988) was made before the High Court.

42.6. The relevant provisions contained in Rules 1 , 2, sub-rules (1), (2) and (3) of Rule 4 and Rule 11 of Order 22 could be usefully reproduced as under

"**1.** ***No abatement by party's death, if right to sue survives***.—The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.—Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

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4. ***Procedure in case of death of one of several defendants or of sole defendant***.—(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

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11. ***Application of Order to appeals***.—In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal."

43. For determining if Order 22 Rule 2 could apply, we have to examine if right to sue survived against the surviving respondents. It is not the case that no legal heirs were available for Defendant 2. It is also not the case where the estate of the deceased Defendant 2 passed on to the remaining parties by survivorship or otherwise. Therefore, applicability of Order 22 Rule 2 CPC is clearly ruled out.

44. Admittedly, steps were not taken for substitution of the legal representatives of Defendant 2, who was Respondent 3 in AS No. 1887 of 1988. Therefore, sub-rule (3) of Rule 4 of Order 22 of the Code directly came into operation and the said appeal filed by Defendants 16 to 18 abated against Defendant 2 (Respondent 3 therein). We may profitably recapitulate at this juncture that in fact, the other appeal filed by Defendants 4, 13 and 14 (AS No. 1433 of 1989) was specifically dismissed by the High Court as against the deceased Defendant 2 on 25-4-2006.

44.1. Once it is found that the appeal filed by Defendants 16 to 18 abated as against Defendant 2 (Respondent 3), the question arises as to whether that appeal could have proceeded against the

surviving respondents i.e. the plaintiff and Defendants 1 and 3 (who were Respondents 1, 2 and 4) . For dealing with this question, we may usefully refer to the relevant principles, concerning the effect of abatement of appeal against one respondent in case of multiple respondents, as enunciated and explained by this Court.

44.2. The relevant principles were stated and explained in depth by this Court in *State of Punjab* v. *Nathu Ram* [*State of Punjab* v. *Nathu Ram*, AIR 1962 SC 89]. In that case, the Punjab Government had acquired certain pieces of land belonging to two brothers jointly. Upon their refusal to accept the compensation offered, their joint claim was referred to arbitration and an award was passed in their favour that was challenged by the State Government in appeal before the High Court. During pendency of appeal, one of the brothers died but no application was filed within time to bring on record his legal representatives. The High Court dismissed [*Province of East Punjab* v. *Labhu Ram*, 1954 SCC OnLine P&H 132] the appeal while observing that it had abated against the deceased brother and consequently, abated against the surviving brother too. The order so passed by the High Court was questioned before this Court in appeal by certificate of fitness.

44.3. While dismissing the appeal and affirming the views of the High Court, this Court in *Nathu Ram case* [*State of Punjab* v. *Nathu Ram*, AIR 1962 SC 89] enunciated the principles concerning the effect of abatement and explained as to why, in case of joint and indivisible decree, the appeal against the surviving respondent(s) cannot be proceeded with and has to be dismissed as a result of its abatement against the deceased respondent; the basic reason being that in the absence of the legal representatives of deceased respondent, the appellate court cannot determine between the appellant and the legal representatives anything which may affect the rights of the legal representatives. This Court pointed out that by abatement of appeal qua the deceased respondent, the decree between the appellant and the deceased respondent becomes final and the appellate court cannot, in any way modify that decree, directly or indirectly.

44.4. The Court observed in that case, *inter alia*, as under: (*Nathu Ram case* [*State of Punjab* v. *Nathu Ram*, AIR 1962 SC 89] , AIR pp. 90-91, paras 4-6 & 8)

"*4*. It is not disputed that in view of Order 22 Rule 4 , Civil Procedure Code, hereinafter called the Code, the appeal abated against Labhu Ram, deceased, when no application for bringing on record his legal representatives had been made within the time limited by law. The Code does not provide for the abatement of the appeal against the other respondents. Courts have held that in certain circumstances, the appeals against the corespondents would also abate as a result of the abatement of the appeal against the deceased respondent. They have not been always agreed with respect to the result of the particular circumstances of a case and there has been, consequently, divergence of opinion in the application of the principle. It will serve no useful purpose to consider the cases. Suffice it to say that when Order 22 Rule 4 does not provide for the abatement of the appeals against the co-respondents of the deceased respondent there can be no question of abatement of the appeals against them. To say that the appeals against them abated in certain circumstances, is not a correct statement. Of course, the appeals against them cannot proceed in certain circumstances and have therefore to be dismissed. Such a result depends on the nature of the relief sought in the appeal.

5. The same conclusion is to be drawn from the provisions of Order 1 Rule 9 of the Code which provides that no suit shall be defeated by reason of the misjoinder or non-joinder of parties and the court may, in every suit, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. It follows, therefore, that if the court can deal with the matter in controversy so far as regards the rights and interests of the appellant and the respondents other than the deceased respondent, it has to proceed with the appeal and decide it. *It is only when it is not possible for the court to deal with such matters, that it will have to refuse to proceed further with the appeal and therefore dismiss it*.

6. The question whether a court can deal with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this

is possible or is not possible. *It may, however, be stated that ordinarily the considerations which weigh with the court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the court. The test to determine this has been described in diverse forms. Courts will not proceed with an appeal (a) when the success of the appeal may lead to the court's coming to a decision which be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the court; and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective, that is to say, it could not be successfully executed*.

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8. The difficulty arises always when there is a joint decree. Here again, the consensus of opinion is that if the decree is joint and indivisible, the appeal against the other respondents also will not be proceeded with and will have to be dismissed as a result of the abatement of the appeal against the deceased respondent. Different views exist in the case of joint decrees in favour of respondents whose rights in the subject-matter of the decree are specified. One view is that in such cases, the abatement of the appeal against the deceased respondent will have the result of making the decree affecting his specific interest to be final and that the decree against the other respondents can be suitably dealt with by the appellate court. We do not consider this view correct. The specification of shares or of interest of the deceased respondent does not affect the nature of the decree and the capacity of the joint decree-holder to execute the entire decree or to resist the attempt of the other party to interfere with the joint right decreed in his favour. *The abatement of an appeal means not only that the decree between the appellant and the deceased respondent has become final, but also, as a necessary corollary, that the appellate court cannot, in any way, modify that decree directly or indirectly. The reason is plain. It is that in the absence of the legal representatives of the deceased respondent, the appellate court cannot determine anything between the appellant and the legal representatives which may affect the rights of the legal representatives under the decree.* It is immaterial that the modification which the Court will do is one to which exception can or cannot be taken."

9.1 After referring to the decision of this Court in the case of **Nathu Ram (supra),** in the case of **Vennigalla Koteswaramma vs. Malampati Suryamba and Others, (2003) 3 SCC 272**, it is observed by this Court that the nature and extent of the abatement in a given case and the decision to be taken thereon will depend upon the facts of each case and, therefore, no exhaustive statement can be made either way and that the decision will ultimately depend upon the fact whether the decree obtained was a joint decree or a separate one. It is further observed that this question cannot and should not also be tested merely on the format of the decree under challenge or it being one or the manner in which it was dealt with before or by the Court which passed it.

Thus, as observed and held by the Court:

(i) The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives;

(ii) If there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made

on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants (Order 22 Rule 2);

(iii) where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. Where within the time limited by law no application is made under sub-rule 1 of Order 22 Rule 4, the suit shall abate as against the deceased defendant;

(iv) the provision of Order 22 shall also apply to the appeal proceedings also.

9.2 As observed and held by this Court in the aforesaid decisions while considering whether the suit/appeal has abated due to non-bringing the legal representatives of plaintiffs/defendants or not, the Court has to examine if the right to sue survives against the surviving respondents. Thereafter the Appellate Court has to consider the question whether non-bringing the legal representatives of some of the defendants, the appeal could have proceeded against the surviving respondents. Therefore, the Appellate Court has to consider the effect of abatement of the appeal against each of the respondents in case of multiple respondents.

9.3 Applying the law laid down by this Court in the aforesaid decisions to the impugned judgment and order dated 09.07.2007 passed by the High Court, it appears that the High Court has mechanically and without holding any further enquiry which was required to be conducted as observed hereinabove, has simply dismissed the entire appeal as having abated due to non-bringing on record the legal representatives of some of the respondents – the original defendants who, as such, neither contested the suit nor filed the written statements. At the cost of repetition, it is observed that as such the original plaintiffs instituted the suit being coowners/co-sharers and for and on behalf of all the coowners/co-sharers of the entire land sought to be acquired under the Land Acquisition Act.

9.4 As observed and held by this Court in the case of **K. Vishwanathan Pillai (supra),** the co-owner is as much an owner of the entire property as a sole owner of the property. No co-owner has a definite right, title and interest in any particular item or a portion thereof. On the other hand, he has right, title and interest in every part and parcel of the joint property. He owns several parts of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner in the property. It is observed that, therefore, one co-owner can file a suit and recover the property against strangers and the decree would enure to all the co-owners. The aforesaid principle of law would be applicable in the appeal also. Thus, in the instant case, when the original plaintiffs – two co-owners instituted the suit with respect to the entire suit land jointly owned by the plaintiffs as well as defendants nos. 9 to 39 and when some of the defendants/respondents in appeal died, it can be said that estate is represented by others – more particularly the plaintiffs/heirs of the plaintiffs and it cannot be said that on not bringing the legal representatives of the some of the cosharers – defendants – respondents in appeal the appeal would abate as a whole.

9.5 While passing the impugned order dated 09.07.2007, the High Court has neither considered the relevant provisions of CPC namely Order 22 Rule 1 to 11 nor held any enquiry which was required to be conducted as observed hereinabove.

9.6 One another important aspect which is also required to be noted is that the suit was filed challenging the acquisition proceedings under the Land Acquisition Act, that too, with respect to the land in question. It was the specific case on behalf of the appellant and even the issue was framed by the learned Trial Court on the jurisdiction of the Civil Court to entertain the suit challenging the acquisition proceedings under the Land Acquisition Act. From the findings recorded by the learned Trial Court, it appears that though the learned Trial Court held the issue of jurisdiction in favour of the appellant herein, still thereafter it granted the relief and decreed the suit which was the subject matter before the High Court. Thus, according to the appellant - DDA – the judgment and decree passed by the learned Trial Court was a nullity and wholly without jurisdiction. If that be so, then, another question which may be required to be considered is, when the original plaintiffs/legal heirs are on record, can it be said that the entire appeal has abated, if in the appeal it is held that the decree was a nullity and/or wholly without jurisdiction then the decree will be nullity for all purposes. The aforesaid aspect is also required to be determined.

9.7 In any case what would have been the consequences of not bringing the legal representatives of some of the respondents/defendants who died during the pendency of the appeal and whether the right to sue survives against the original plaintiffs and/or surviving respondents/defendants was to be considered by the High Court, which the High Court failed to consider in the instant case.

10. In view of the above discussion and for the reason stated above both these appeals succeed. The impugned judgment and order passed by the High Court dated 09.07.2007 dismissing the appeal as a whole as having abated for not bringing the legal representatives of some of the respondents/original defendants who died during the pendency of the appeal is hereby set aside. The High Court to consider the Appeal now in accordance with law and on its own merits and in light of the observations made hereinabove, more particularly, the High Court shall have to consider and hold an enquiry, whether, on the death of some of the respondents in the appeal (defendants in suit) the right to sue against the remaining respondents – original plaintiffs/the remaining original defendants would survive or not including the fact that the estate is being represented by surviving original plaintiffs/heirs of the original plaintiffs/surviving defendants having a bearing on the enquiry to be held.

With these observations the present Appeals are Allowed accordingly to the aforesaid extent. However, there shall be no order as to costs.