

A JALADI SUGUNA (DECEASED) THROUGH LRS.
v.
SATYA SAI CENTRAL TRUST & ORS.
(Civil Appeal No. 3375 of 2008)

MAY 5, 2008

B (R.V. RAVEENDRAN AND LOKESHWAR SINGH
PANTA, JJ.)

Code of Civil Procedure, 1908:

C Or. 22 rr. 4 and 5 – *Determination of question as to legal representative – Appeal before High Court by defendant – Death of plaintiff-respondent – High Court hearing the main appeal without first deciding the question of legal representative – HELD: Where respondent-plaintiff who has*
D *succeeded in a suit, dies during pendency of the appeal, any judgment rendered on hearing the appeal filed by the defendant, without bringing legal representatives of deceased respondent-plaintiff on record, will be a nullity – Provisions of Rules 4 and 5 of Order 22 are mandatory – When a*
E *respondent in an appeal dies, Court cannot simply say that it will hear all rival claimants to estate of deceased respondent and proceed to dispose of the appeal – Nor can it implead all persons claiming to be legal representatives, as parties to appeal without deciding who will represent the estate of the*
F *deceased, and proceed to hear the appeal on merits – Court cannot also postpone the decision as to who is legal representative of deceased respondent, for being decided along with the appeal on merits – Though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of appeal on merits, r.4 r/w r. 11*
G *make it clear that appeal can be heard only after the legal representatives are brought on record – Proper course for the High Court, was first to decide as to who were the legal representatives – After getting the findings, from the*

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Subordinate Court, it ought to have decided that question, and permitted the person/s who are held to be the legal representatives to come on record – Only then the appeal could be heard on merits – Third respondent was added as the legal representative of the deceased first respondent only after the final judgment was rendered allowing the appeal – That amounts to the appeal being heard against a dead person – That is clearly impermissible in law – Entire judgment is a nullity and inoperative – Matter remitted to High Court.

s.33, Or. 20 r.1 and Or. 41 r, 30 – Hearing of appeal – Death of plaintiff-respondent during pendency of appeal – HELD: – When the respondent-plaintiff died and her estate remained unrepresented, it cannot be said that the appeal was ‘heard’ – Legal representatives who succeeded to her estate will have to be brought on record and they should be heard in their capacity as persons representing the estate of deceased plaintiff – If they are not heard, there is no ‘hearing’ of the appeal in the eye of law – Consequently, judgment of the trial court could not be disturbed or set aside by the appellate court.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3375 of 2008.

From the Judgment and Order dated 19/9/2006 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Appeal Suit No. 294/2000

M.N. Rao, Vedula Venkata Ramana, T.N. Rao, Kavita Yadav, Manjeet Kirpal and Paramjeet Singh for the Appellant.

S.S. Naganand, M.N. Krishnamani, Raghavendra S. Srivatsa, D. Bharat Kumar, Anand, Azim H. Laskar, M. Indrani and Abhijit Sengupta, for the Respondents.

The Order of the Court was delivered by

R.V. RAVEENDRAN J. 1. Leave granted. Heard.

2. The appellants claim to be the legal representatives of one Jaladi Suguna. The said Suguna had filed a suit in OS

A No.658/1987 in the Court of Sub-ordinate Judge, Vijayawada,
seeking a declaration that the registered gift deed dated
27.3.1980 executed by her in favour of the first Respondent Trust
(‘Trust’ for short) in respect of the suit property was null and void
and for a consequential injunction restraining the said Trust from
B interfering with her rights. The Trust was the first defendant and
the tenant in occupation of a portion of the suit property was the
second defendant in the said suit. The said suit was decreed
by the Trial Court by Judgment and Decree dated 25.8.1999,
declaring that the said gift deed to be void and restraining the
C Trust from interfering with her possession.

3. Feeling aggrieved, the Trust filed Appeal Suit No.294/
2000 in the High Court of Andhra Pradesh. Suguna who was
the first respondent in the said appeal, died during the pendency
of the appeal, on 21.3.2002. The Trust herein filed an application
D (CMP No.10258/2002) to bring her husband (the third
respondent herein) on record, as her legal representative. The
appellants, who are the nieces and nephews of Suguna filed an
application (CMP No.13807/2002) seeking leave to come on
record as her legal representatives. The husband of the
E deceased claimed that she died intestate and he was the sole
legal heir. Incidentally, he also supported the case of the Trust in
the litigation. The appellants claimed that the deceased had
bequeathed the suit property to them under a will and they were
interested in representing and safeguarding the estate of the
F deceased which included the suit property and they should
therefore be permitted to come on record as the legal
representatives of the deceased. Thus, there was a dispute as
to who is or are the legal representatives of the deceased
Suguna. Therefore, the High Court directed the Trial Court, under
the proviso to Rule 5 of Order 22 of Code of Civil Procedure
G (‘CPC’ for short) to try the said question and submit its finding.

4. The Trial Court accordingly, held an enquiry and
submitted a report dated 28.11.2005 recording a finding that
the deceased Suguna had executed two wills dated 27.4.1989
H and 24.12.2002 in favour of the appellants under which the suit

property was bequeathed to them. On this finding, their application to come on record as legal representatives of the deceased Suguna deserved to be accepted. A

5. On the receipt of the said report, the High Court ought to have determined the question as to who are the legal representatives of the deceased Suguna, as required by Order 22 Rule 5 CPC. But it did not do so. Instead, it proceeded to hear the main appeal itself as also the said two LR applications and rendered its Judgment dated 19.9.2006. In the judgment, it formulated the following two points as arising for its consideration in the appeal : (i) whether the gift deed dated 27.3.1980 was void; and (ii) whether the suit was barred by limitation. It considered the said two points and answered them in the affirmative in favour of the Trust. Thereafter, it referred to the death of Suguna during the pendency of the appeal and the dispute arising on account of two LR applications. It considered the rival claims and the finding of the trial court. It disagreed with the finding of the trial court and held that it was not satisfied that Suguna had executed any will in favour of appellants. Consequently, CMP No.10258/2002 filed by the Trust to bring on record the third Respondent as the legal representative of the deceased Suguna was allowed and CMP No.13807/2002 filed by the appellants herein was dismissed. The High Court however clarified that its findings in regard to legal representatives being summary in nature, the appellants can agitate their right in an independent legal proceeding. In view of its finding on the two points relating to merits, the High Court upheld the validity of the gift deed, allowed the appeal of the Trust, and set aside the decree of the trial court. As a result, the suit filed by Suguna stood dismissed. B
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6. The said Judgment and order of the High Court dated 19.9.2006 is under challenge in this appeal by special leave. The appellants' challenge is three-pronged. Firstly, they challenge the procedure adopted by the High Court in hearing the appeal without bringing the legal representatives on record and deciding the appeal on merits first and thereafter deciding G
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A the issue relating to legal representative. Secondly, they challenge the decision on the question as to who are the legal representatives of Suguna. Thirdly, they challenge the judgment on merits upholding the validity of the gift deed and dismissing the suit.

B 7. We may refer to the rival contentions on the first question. According to the appellants, the High Court ought to have decided the question of representation of the estate of the deceased respondent first and only thereafter ought to have proceeded to hear the appeal. They submit that the procedure adopted by the High Court has resulted in miscarriage of justice as it did not afford them due opportunity to effectively contest the appeal on merits. On the other hand, respondents 1 and 3 contend that there was no irregularity in the procedure adopted by the High Court in deciding the appeal and the LR applications together. It was submitted that the provision of Order 22, Rule 5 does not require the question of legal representatives to be decided first before the appeal is heard. It was also submitted that both the rival claimants to the estate, namely the husband (third respondent) and the nephews and nieces (appellants), were represented by counsel and were heard fully, both on the question of representation of the estate of the deceased and on the merits of the appeal and therefore the appellants were in no way prejudiced. Having heard the parties on the first point (relating to the procedure adopted by the High Court), we are of the view that this appeal can be disposed of with reference to the said preliminary point and it is not necessary to examine the other two points.

G 8. 'Legal representative' according to its definition in section 2(11) of CPC, means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased. Thus a legatee under a will, who intends to represent the estate of the deceased testator, being an intermeddler with the estate of the deceased, will be a legal representative. Order 22 CPC inter alia deals with death of parties. Rule 4 relates to the procedure in case of

death of one of several defendants or of the sole defendant. A
Rule 5 relates to determination of question as to legal
representative. Rule 11 relates to application of Order 20 to
appeals. The said rules, to the extent relevant, are extracted
below:

*"4. Procedure in case of death of one of several B
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 C
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 D
appropriate to his character as legal representative of the
deceased defendant. xxxxxxx

*"5. Determination of question as to legal representative E
:*— 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 F
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."

*"11. Application of Order to appeals :— In the application G
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, the word 'suit' an appeal."*

[emphasis supplied] H

- A 9. When a respondent in an appeal dies, and the right to
sue survives, the legal representatives of the deceased
respondent have to be brought on record before the court can
proceed further in the appeal. Where the respondent-plaintiff
who has succeeded in a suit, dies during the pendency of the
B appeal, any judgment rendered on hearing the appeal filed by
the defendant, without bringing the legal representatives of the
deceased respondent – plaintiff on record, will be a nullity. In
the appeal before the High Court, the first respondent therein
(Suguna) was the contesting respondent and the second
C respondent (tenant) was only a proforma respondent. When first
respondent in the appeal died, the right to prosecute the appeal
survived against her estate. Therefore it was necessary to bring
the legal representative/s of the deceased Suguna on record to
proceed with the appeal.
- D 10. 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
E 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
F 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. The determination as to who is the legal
representative under Order 22 Rule 5 will of course be for the
G limited purpose of representation of the estate of the deceased,
for adjudication of that case. Such determination for such limited
purpose will not confer on the person held to be the legal
representative, any right to the property which is the subject
matter of the suit, vis-à-vis other rival claimants to the estate of
H the deceased.

11. The provisions of Rules 4 and 5 of Order 22 are A
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 B
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 C
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. The Code also provides that where one of the
respondents dies and the right to sue does not survive against D
the surviving respondents, the court shall, on an application made
in that behalf, cause the legal representatives of the deceased
respondent to be made parties, and then proceed with the case.
Though Rule 5 does not specifically provide that determination
of legal representative should precede the hearing of the appeal
on merits, Rule 4 read with Rule 11 make it clear that the appeal E
can be heard only after the legal representatives are brought on
record.

12. The third respondent, who is the husband of the
deceased, wants to come on record in his capacity as a sole
legal heir of the deceased, and support the case of the Trust F
that there was a valid gift by the deceased in its favour. On the
other hand, the appellants want to come on record as
testamentary legatees in whose favour the suit property was
bequeathed by will, and represent the estate of the deceased
Suguna as intermeddlers. They want to continue the contest to G
the appeal. When Suguna - the first respondent in the appeal
before the High Court died, the proper course for the High Court,
was first to decide as to who were her legal representatives.
For this purpose the High Court could, as in fact it did, refer the
question to a Subordinate Court under the proviso to Rule 5 of H

- A Order 22 CPC, to secure findings. After getting the findings, it ought to have decided that question, and permitted the person/s who are held to be the legal representative/s to come on record. Only then there would be representation of the estate of the deceased respondent in the appeal. The appeal could be
- B heard on merits only after the legal representatives of the deceased first respondent were brought on record. But in this case, on the dates when the appeal was heard and disposed of, the first respondent therein was dead, and though rival claimants to her estate had put forth their claim to represent her
- C estate, the dispute as to who should be the legal representative was left undecided, and as a result the estate of the deceased had remained unrepresented. The third respondent was added as the legal representative of the deceased first respondent only after the final judgment was rendered allowing the appeal.
- D That amounts to the appeal being heard against a dead person. That is clearly impermissible in law. We, therefore, hold that the entire judgment is a nullity and inoperative.

13. We may look at it from yet another angle. The relief sought by Suguna in the suit was one in regard to which the right to sue would have survived to her legal representatives if she had died during the pendency of the suit. She successfully prosecuted the suit and obtained the decree declaring the deed to be void. The said decree would continue to be in force unless it is set aside in a manner known to law. It could be set aside in an appeal filed by the aggrieved party, but only after hearing the plaintiff who had secured the decree. Pronouncement of judgment in a case, can be only after the case has been heard. (Vide section 33, Order 20 Rule 1 and Order 41 Rule 30 of CPC). When the respondent - plaintiff died and his/her estate remains unrepresented, it cannot be said that the appeal was 'heard'. When the respondent-plaintiff died, the legal representatives who succeeded to her estate will have to be brought on record and they should be heard in their capacity as persons representing the estate of deceased plaintiff. If they are not heard, there is no 'hearing' of the appeal in the eye of

law. Consequently the judgment of the trial court could not be disturbed or set aside by the appellate court. Be that as it may. A

14. We, accordingly, allow this appeal and set aside the judgment dated 19.9.2006, restore the appeal to the file of the High Court, with the following directions : B

- (i) The High Court shall first decide the dispute between the husband of the deceased on the one hand, and her nieces and nephews on the other, after considering the evidence and findings dated 28.11.2005 recorded by the Trial Court and hearing the rival claimants. C
- (ii) After such determination, the person/s determined to be the person/s entitled to represent the estate of the deceased shall be brought on record as the legal representatives of the deceased. D
- (iii) Thereafter, the appeal shall be heard on merits and disposed of in accordance with law.

15. Having regard to the facts and circumstances, we request the High Court to dispose of the appeal, preferably within a period of six months. Nothing stated above shall be construed as expression of any opinion on the merits of the matter. We also make it clear that the determination as to representation of the estate of the deceased, by the High Court, will be only for the purposes of the appeal before the High Court and will not in any way affect the rights of claimants to the estate of the deceased or the adjudication of any dispute among them in any independent proceedings. Parties to bear the respective costs. E F

R.P. Referred to High Court. G