

MUNICIPAL COUNCIL, MANDSAUR

v.

FAKIRCHAND AND ANR.

FEBRUARY, 6, 1997

[G.N. RAY AND G.T. NANAVATI, JJ.]

Code of Civil Procedure, 1908 :

Appeal—Abatement for not bringing legal representatives on record—Suit filed by co-owners seeking permanent injunction against appellant—Municipality—Suit decreed by Trial Court—Appeal preferred by Municipality—Death of the co-owner during pendency of appeal—Municipality not bringing on record legal representatives of deceased co-owner—Consequently High Court holding that appeal stood abated—Appeal preferred by Municipality before Supreme Court—Held from the plaint it cannot be definitely held that property was coparcenary property which could be represented by a Karta—Assuming it was coparcenary property there was nothing to suggest that any member was acting as Karta—On the other hand it was clear that plaintiffs intended to exercise their right as co-owners of property and have not authorised anyone to act as Karta—Held in such circumstances order of High Court was not erroneous.

CIVIL APPELLATE JURISDICTION : Civil appeal No. 3012 (N) of 1982.

From the Judgment and Order dated 31.8.79 of the Madhya Pradesh High Court in S.A. No. 115 of 1968.

S.K. Gambhir for the Appellant.

Dr. N.M. Ghatate and S.V. Deshpande for the Respondents.

The following Order of the Court was delivered :

Delay condoned.

Application for amendment in substitution application is allowed.

The short question that arose for decision in this appeal is whether the High Court has correctly decided by the impugned judgment in S.A.

A No. 115 of 1968 that the appeal preferred by the appellant—Municipal Council, Mandsaur stood abated in view of the fact that legal representatives of one of the co-owners were not brought on record when the appeal was pending before the lower appellate court.

B It may be stated here that initially three plaintiffs being brothers claiming to be the owners of the joint Hindu family property, filed a suit against Municipal Council, Mandsaur for a permanent injunction by asserting their title to the property. Such suit was decreed by the trial court and the Municipality thereafter preferred an appeal before the lower appellate court. During the pendency of such appeal, one of the three brothers had
C died. The Municipality did not bring the heirs and legal representatives of the deceased brother on record despite knowledge of such death but made an application that the name of the deceased brother should be deleted from the array of parties. The question thereafter was raised by the remaining plaintiffs that the appeal had abated as a whole because the heirs and legal representatives of one of the co-owners had not been brought on
D record. Such contention has been upheld by the impugned decision.

Mr. S.K. Gambhir, the learned counsel appearing for the appellant has contended before us that since in the plaint the plaintiffs had stated that the property was a joint Hindu family property, such property must
E be deemed to be represented by the Karta of the joint family and as the eldest brother was alive, it must be held that such joint Hindu family property was represented by the eldest brother and in that case, there was no question of abatement of the appeal as a whole

F We are however unable to accept such contention of Mr. Gambhir for the reason that from the statement made in the plaint it cannot be definitely held that the property was coparceners property which could be represented by a karta. It has been alleged in the plaint that after the death of the father, all the three brothers became owners of the said joint Hindu family property. It may be indicated here that if it was a coparcenary
G property then the sons would have been coparceners even before the death of the father and there was no necessity to wait till the death of the father to get ownership of the property. The averments in the plaint really means that the disputed property was the undivided property of the said three joint owners who had inherited the father's interest after his death. That
H apart, even it is assumed that it was coparcenary property there is nothing

on record to indicate that any one member or the eldest male member of the family was acting as a Karta of the joint family. On the contrary, it appears that all the co-owners filed the said suit for injunction, which on the face of it, only indicates that all of them intend to exercise their right as co-owners of the property and they have not authorised any one of them to represent the property as a Karta of the joint Hindu family property. In the aforesaid circumstances, the decision of the High Court cannot be said to be erroneous for which any interference by this Court is called for. The appeal, therefore, fails and is dismissed without any order as to costs.

T.N.A.

Appeal dismissed.