

A

BHOLA NATH MISRA

v.

RAJENDRA PANDEY AND ANR.

FEBRUARY 20, 1997

B

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

Decree :

C *Suit—Decree against more than one defendants—One of them not
contesting the decree—Effect of—Held, when decree against one of the defen-
dants had become final and is either not contested or not carried in appeal
the decree becomes enforceable as against the defendant who suffers the
decree—But when one of the defendants contests the correctness of the decree,
it has to be examined whether the finding recorded and the decree passed by
D the trial court as affirmed by the appellate court is correct in law—High Court
has not gone into the merits—Only course open is to remit the matter to High
Court for reconsideration on merits—However, in the instant case, no useful
purpose would be served in remitting the matter to High Court after two
decades—Appeal dismissed.*

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1606 of
1980.

From the Judgment and Order dated 21.4.98 of the Allahabad High
Court S.A. 3091 of 1976.

F

Ms. Rachna Gupta for Mrs. Rani Chhabra for the Appellant.

V.J. Francis and P.I. Jose for the Respondents.

G

The following Order of the Court was delivered :

H

This appeal by special leave arises from the judgment of the learned
Single Judge of this Allahabad High Court, made on April 21, 1978
confirming the decree of the trial Court and appellate Court granting a
perpetual injunction against the appellant and the second defendant
restraining them from making any construction on the land in dispute, as

shown in the map annexed to the plaint and also mandatory injunction A
to demolish the construction in so far as it relates to the construction on
such land. The second defendant remained *ex-parte* in the trial Court and
the decree as against him had become final. The appellant/first defendant
carried the matter in appeal which was confirmed and the second B
appeal was filed. Counsel appearing for the appellant made a state-
ment on December 6, 1976 that he was not seeking any relief against
the second defendant and the decree as against the second defendant
having become final, he was not proposing to take out any service of C
notice on the second defendant. As a result, the Court noted on that
date "that effect thereof should be brought to the notice of the court"
when the appeal was to be heard on merits. Consequently, when the
matter had come up for hearing on merits, the learned Judge
proceeded on the premise that the decree as against the second
defendant being joint and inseperable, the same have become final, as
against the second defendant it was abated and so it would not be D
proper to go into the merits in the matter. As a consequence, the appeal
also was dismissed without going into the merits, as contended by the
appellant. Thus, this appeal.

Palpably, the view taken by the High Court is not correct. The E
question of abatement of the appeal does not arise because this is not
a case of any of the parties expiring pending proceedings followed by
omission to bring the legal representatives on record. In that situation
only, the appeal gets abated. But when the decree as against one of the
defendants has become final and is either not contested or is not carried
in appeal, the decree becomes enforceable as against the defendant who F
suffers the decree. But when one of the defendants contests the correct-
ness of the decree, necessarily, it has to be examined whether the finding
recorded and the decree passed by the trial Court, as affirmed by the
appellate Court, is correct in law. But, unfortunately, the High Court
has not gone into the question. The only course then open is remittance G
of the matter for consideration by the High Court on merits. Unfor-
tunately, this Court has dispensed with the printing and directed the
appeal to be heard on the basis of the material place in the SLP paper
book. The appellant has not placed on record the judgment and decree
of either the trial Court or the appellate Court. Under these circumstan-
ces, we are not in a position to know what were the reasons given by H

A trial Court and as affirmed by the appellate Court in granting the decree against the appellant. Under these circumstances, we think that no useful purpose would be served in remitting the matter after two decades.

The appeal is, accordingly, dismissed. No costs.

B R.P.

Appeal dismissed.