

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.14 of 2016.

Date of Decision: 31st May, 2016.

Ashok Kumar ..Appellant.

Versus

Sarwan Kumar and others ..Respondents.

Coram

Hon'ble Mr. Justice Dharam Chand Chaudhary, J.
Whether approved for reporting? No.

For the appellant: Mr. Vikas Rathore,
Advocate.

For respondents No.1 to 7: Mr. Ashok Tyagi,
Advocate.

For respondents No.8(b) to 8(f): Mr. Desh Raj Thakur,
Advocate.

Dharam Chand Chaudhary, J (Oral).

Challenge herein is to the judgment and
decree dated 9th September, 2015, passed by
learned Additional District Judge, Sirmaur District at

Whether reporters of the Local papers are allowed to see the judgment? Yes.

Nahan, Camp at Paonta Sahib, in Civil Appeal No.16-N/13 of 2015, whereby the appeal was ordered to be dismissed and the judgment and decree passed by learned Civil Judge (Junior Division), Court No.2, Paonta Sahib, in Civil Suit No.140/1 of 2008 (2140/2013), upheld.

2. It is worthwhile to mention that one of the respondents, i.e., proforma respondent No.8(a) Smt. Khatun has expired on 3rd June, 2015 during the pendency of the appeal in the lower appellate Court. The appellants/defendants have failed to bring on record her legal representatives. As a matter of fact, on her death and for want of requisite steps, the appeal before learned lower appellate Court stood abated automatically, however, only qua deceased proforma defendant or as a whole is a question, which could have been considered and adjudicated by the lower appellate Court. Anyhow, the factum of death of deceased

proforma defendant Khatun went unnoticed and learned lower appellate Court has decided the appeal without substitution of her legal representatives and deciding the question of abatement of the appeal, if any. In view of the law laid down by this Court, as and when the question of abatement of the suit or appeal arises, the same can only be gone into and decided by the Court where the suit or appeal was pending at the time of death of a party. It has been held so by this Court in ***Jaswant Singh v. State of Himachal Pradesh and others, 2015 (2) Shim.L.C. 674*** by applying the ratio of the judgments rendered by Co-ordinate Benches of this Court in ***Jagan Nath and others v. Ishwari Devi, 1988(2) Shim.L.C. 273*** and ***Karam Chand and others v. Bakshi Ram and others, 2002(1) Shim.L.C. 9.***

3. On the death of a party to a suit or appeal and for want of consequential steps, suit/ appeal abates because abatement is automatic

after the expiry of the period prescribed for filing an application to set aside the same and substitution of legal representatives of deceased party. In the case in hand, proforma respondent Khatun had expired on 3rd June, 2015 during the pendency of the appeal in the lower appellate Court. The limitation prescribed for taking consequential steps and setting aside the abatement stands expired long back.

4. In view of the legal as well as factual position discussed supra, this Court is left with no option except to hold that the judgment and decree under challenge being against a dead person is nullity, hence not legally sustainable.

5. Consequently, the judgment and decree under challenge in this appeal, being against a dead person is nullity and as such is ordered to be quashed and set aside. The case is remanded to the lower appellate Court with a direction to allow the appellants to take consequential steps on the death

of proforma respondent Smt. Khatun and thereafter to decide the question of substitution of legal representatives and also the question of abatement of the appeal, if any, after affording the parties due opportunity of being heard. The appeal thereafter be decided afresh in accordance with law. The parties through learned Counsel representing them are directed to appear before learned lower appellate Court on **7th July, 2016**.

6. The appeal stand disposed of accordingly. All pending applications shall also stand disposed of.

An authenticated copy of this judgment be sent to learned lower appellate Court for compliance.

May 31, 2016.
(rc)

**(Dharam Chand Chaudhary),
Judge.**