JAYARAMA REDDY & ANR. A

v.

REVENUE DIVISIONAL OFFICER & LAND ACQUISITION OFFICER, KURNOOL

March 23, 1979 B

[P. N. SHINGHAL AND D. A. DESAI, JJ.]

Code of Civil Procedure, 1908—*Order XXII r. 4—Scope of—Cross appeals —Legal representatives of deceased appellant brought on record—Appellant in cross-appeal failed to bring them on record of cross appeal—Cross appeal—If abates—No objection raised before the High Court—If could be raised in further appeal.* C

Order XXII Rule 4(1) CPC provides that where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, 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. Sub-rule (3) of the Rule provides D that where, within the time limited by law, no application is made under sub-rule (1) the suit shall abate as against the deceased defendant.

The land in dispute, which belonged to three persons, was acquired by the State Government for a public purpose and the market value was fixed at Rs. 2/- per square yard. On appeal by the claimants, it was raised to Rs. 12/- per square yard. Against the order of Subordinate Judge, both the State and E the claimants filed appeals before the High Court.

While the appeals were pending before the High Court, one of the claimants died. The legal representatives of the deceased claimant were brought on record in the claimant's appeal, but the Government took no steps to bring the legal representatives of the deceased claimant on record in the appeal filed by it.

F

Dismissing the claimant's appeal and allowing the Government appeal the High Court reduced the price of the acquired land to Rs. 4/- per square yard.

In appeal before this Court the claimants contended that since the legal representatives of the deceased claimant were not brought on record within the period of limitation, the Government appeal abated and stood dismissed.

G

Dismissing the appeal,

HELD : (per Shinghal, J.) 1. It is not correct to say that the Government appeal stood dismissed against the surviving respondents because the Government failed to bring the legal representatives of the deceased claimant on record within the specified time limit. The question whether the right to sue survived against the surviving respondents alone, was a matter for the appellate court to examine and decide after hearing the parties with regard to the question of H jointness or otherwise of the decree and the further question whether there was any possibility of two contradictory decrees. [605 F-G]

A 2. There is no justification for the argument that the High Court's decree was a nullity because it was passed against a dead person. A decree against a dead person is a nullity because it cannot be allowed to operate against his legal representatives when they were never brought on the record to defend the case. It is held a nullity because it cannot be executed against his legal representatives who had not had the full opportunity of being heard in respect of it. If the respondent to an appeal dies and the appellate court loses sight of that development or ignores it, it will still be permissible for the court hearing the appeal to bring his legal representatives on the record on an application to that effect and to consider any application for condonation of delay. It is permissible for the appellate court to remand the case for disposal according to law to the court in which it was pending at the time of the death of the deceased party. [606 B—D]

C 3. While the law treats such decree as a nullity *qua* the legal representative of the deceased defendant or respondent, there is nothing to prevent him from deciding that he would not treat the decree as a nullity but would abide by it as it stood or as it may be modified on appeal. If a legal representative adopts that alternative, it cannot be said that his option to be governed by the decree is against the law or any concept of public policy or public morality. It is a matter entirely at the discretion of the legal representative to decide whether D he would raise the question that the decree had become a nullity, at the appropriate time, or to abandon that obviously technical objection and fight the appeal on the merits. [606 F—H]

4. Nor can it be said that the appellate court is denuded of its jurisdiction to hear an appeal in which one of the respondents had died and the right to sue E did not survive against the surviving defendant or defendants alone merely because no application had been made to bring his legal representative on the record when no objection to the effect was raised by any one of them. [607 B]

5. At the same time, an inference as to the abandonment of such plea of abatement cannot be drawn unless there is clear, sufficient and satisfactory evidence to prove that the legal representative of the deceased respondent was aware of it and abandoned it wilfully. [607 D] F

In the instant case, on the death of one of the three claimants the other two surviving claimants brought the legal representatives of the deceased on the record. They knew that the legal representatives of the deceased claimant had not been brought on the record of the Government appeal within the time prescribed by law and that, therefore, the appeal stood abated. Even so, they G made no application to the High Court seeking dismissal of the Government appeal. This position continued for as long as five years. Two courses were open to the claimants: (i) to move the High Court for the dismissal of the Government appeal, or (ii) to allow that appeal to be heard and decided on merits. The claimants chose the second course. When the appeals came up for hearing before the High Court, the appeal was argued on merits without raising an objection on this point. After the High Court had pronounced its H judgment, the claimants had asked for a certificate for leave to appeal without asking for a review of its judgment on the ground that the legal representatives were not brought on the record of the Government appeal. So a point of defence which was wilfully and deliberately abandoned by a party in a civil

case at a crucial stage, cannot be allowed to be taken up later at the will of the party which had abandoned the point or as a last resort, or as an after thought. A

Gaekwar Baroda State Railway v. *Hafiz Habib-ul-Haq & Ors.*, 65 Indian Appeals 182 : *Thakore Saheb Khanji Kashari Khanji* v. *Gulam Rosul Chandbhai*, AIR 1955 Bom. 449; *Punjab State* v. *Sardar Atma Singh*, AIR 1963 Pub. 113, *State of Rajasthan & Ors.* v. *Raghuraj Singh*, AIR 1968 Raj. 14; held inapplicable. B

6. The High Court had rightly taken into consideration all factors necessary for coming to the right conclusion for fixing the rate of compensation payable to the claimants namely that a few months before the date of acquisition the claimants themselves purchased the land at Rs. 2/- per square yard, that they did not make any improvements after its purchase and that the previous owners had not sold the land for any compelling reason. [611 B—D] C

Desai, J. (concurring) 1. The basic principle underlying O. XXII rr. 3 and 4 CPC is a facet of natural justice. It is a fundamental rule of natural justice that a man has a right to be heard where a decision affecting him or his interest is to be recorded. As a corollary to the rule of *audi altrem partem* it is provided in the Code of Civil Procedure that where a party to a proceeding dies pending the proceeding and the cause of action survives, the legal representatives of the deceased party should be brought on record, which means, that such legal representative must be afforded an opportunity of being heard before any liability is fastened on them. Although the legal representatives of a deceased plaintiff or defendant must be substituted on the pain of the action abating, with utmost diligence, from a multitude someone may escape notice and the consequent hardship in abatement of action led this Court to assert the principle that where some legal representatives were brought on record permitting an inference that the estate was adequately represented, the action would not abate though it would be the duty of the other side to bring on record even at a later date those legal representatives who were overlooked or missed. [614 E—H] D E

2. The principle deducible from decisions of this Court is that if the deceased had, as a party, a right to put forth his case, those likely to be affected by the decision, on death of the deceased, had the same opportunity to put forth their case and even if from a large number having identical interest some are not brought on record those who are brought on record would adequately take care of their interest and the cause, in the absence of some such, would not abate. [615 F—G] F

Daya Ram & Ors. v. *Shyam Sundari*, [1965] 1 SCR 231; *N. K. Mohammad Sulaiman* v. *N. C. Mohammad Ismail & Ors.*, [1966] 1 SCR 937; *Harihar Prasad Singh & Ors.* v. *Balmiki Prasad Singh & Ors.*, [1975] 2 SCR 932; referred to. G

3. Yet another principle is that if the legal representatives of the deceased party were before the court in the same action even if in another capacity, failure to bring them on record in a specific legal position would not result in abatement of the action. [615 H] H

Mahabir Prasad v. *Jage Ram & Ors.* [1971] 3 SCR 301; referred to.

A 4. Where a decree partly satisfies each of the two parties in a suit, both parties may prefer an appeal challenging only that part of the decree by which each party is dissatisfied. But where one of the two parties appeals and a notice of appeal is served on the other, the respondents receiving the notice may prefer cross-objections under O. XLI, r. 22 CPC. In such a case, though the respondent may not have appealed from any part of the decree, he may take cross-objections to the decree which he could have taken by way of appeal. The para-
B meters of cross-objections are limited to the contention which could properly be taken in an appeal against a decree or part of a decree. [617 B—D]

5. When legal representatives of a deceased appellant are substituted and those very legal representatives as legal representatives of the same person occupying the position of respondent in cross-appeal are not substituted, its outcome would be that they were on record in the connected proceeding before the
C same court hearing both the matters, in one capacity though they were not described as such in their other capacity, namely, as legal representatives of the deceased respondent. To ignore this obvious position would be giving undue importance to form rather than substance. The anxiety of the court should be whether those likely to be affected by the decision in the proceeding were before the court having full opportunity to canvass their case. Once that is satisfied it can be said that the provisions contained in rr. 3 and 4 of O. XXII are satisfied
D in a given case. To take another view would be to give an opportunity to the legal representatives of a deceased party in an appeal having had the fullest opportunity to canvass their case through the advocate of their choice appearing in cross-appeals for them and having canvassed their case and lost, to turn round and contend that they were not before the court as legal representatives of the same person in his other capacity, namely, respondent in the cross-appeal. In other words, those legal representatives were before the court all throughout the
E hearing of the appeal as parties to the appeal and canvassed their case and were heard through their advocates and they had the full opportunity to put forth whatever contentions were open to them in the appeals and to contest the contentions advanced against them by the opposite side and yet if the other view is taken that as they were not formally impleaded as legal representatives of the deceased respondent in the cross-appeal that appeal has abated, it would be wholly unjust. It is very difficult to distinguish on principle the approach of
F the court in appeals and cross-objections and in cross-appeals in this behalf. The cases which have taken the view that in cross-appeals the position is different from the one in appeal and cross-objections do not proceed on any discernible legal principle. Nor can they be explained by any demonstrable legal principle but in fact they run counter to the established legal principle. [623 G—H; 624 A—C]

G *Brij Inder Singh* v. *Lala Kanshi Ram & Ors.*, AIR 1917 PC 156; *Rangubai Kom Shanker Jagtap* v. *Sunderabai Bhratar Sakharam Jedhe & Ors.*, [1965] 3 SCR 211 at 216-217; applied.

Sankaranaraina Saralaya v. *Laxmi Hengsu & Ors.*, AIR 1931 Mad. 277; *State of Rajasthan & Ors.* v. *Raghuraj Singh*, AIR 1968 Raj. 14; not approved.

H In the instant case the legal representatives of the deceased claimant were brought on the record of the claimant's appeal. Both the appeals were heard together. Their counsel argued their case in both appeals. Therefore, they were

before the court all through. The fact that they had not been described as legal representatives of the deceased in the Government appeal could not make any difference and their appeal has not abated. A

On the question of compensation no case had been made out for interfering with the view of the High Court.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2314 of 1969. B

From the Judgment and Decree dated 4-2-1969 of the Andhra Pradesh High Court in Appeal No. 180/64.

A. K. Sen and *A. Subba Rao* for the Appellant.

T. V. S. N. Chari for the Respondent. C

The following Judgments were delivered :

SHINGHAL, J.—This appeal is by a certificate of the High Court of Andhra Pradesh on the valuation of the subject matter and is directed against its judgment dated February 4, 1969. D

The State Government acquired 2 acres and 79 cents of the land of the appellants in Kurnool town, for locating a bus depot of the Andhra Pradesh State Transport Corporation. It was arable land within the municipal limits of the town, with two trees and an old compound wall. Its possession was taken by the State Government on May 25, 1962. The market value of the land was fixed at Rs. 27,042.53 at the rate of Rs. 2/- per square yard. The compound wall and the trees were valued at Rs. 930/- and after allowing a solatium of 15 per cent and interest at 4 per cent per annum, the total compensation was worked out to Rs. 33,069.12. N. Jayarama Reddy, Y. Prabhakar Reddy and C. Manikya Reddy, who were the three owners of the land, accepted that compensation under protest and applied for a reference under section 18 of the Land Acquisition Act. After recording evidence and inspecting the site, the Subordinate Judge held that the claimants were entitled to payment at the rate of Rs. 12/- per square yard for the value of land, a solatium of 15 per cent and interest at 4 per cent. Both parties felt aggrieved against that order dated July 30, 1963. While appeal No. AS 180 of 1964, hereinafter referred to as the government appeal, was filed by the Revenue Divisional Officer and the Land Acquisition Officer, Kurnool, appeal No. AS 296 of 1964, hereinafter referred to as the claimants' appeal, was filed by the claimants. There were thus cross-appeals in the High Court against a common order of the Subordinate Judge. The memorandum of the government appeal was filed on December 7, 1963. I do not E F G H

A have the date of the claimants' appeal on the record, but it is not disputed that it was filed before April 3, 1964. While the two appeals were pending in the High Court, Y. Prabhakar Reddy, one of the three claimants of the compensation for the acquired land, died on April 3, 1964. An application was made in the claimants' appeal to
B bring his legal representatives on the record, and the High Court passed an order on July 14, 1964 (in C.M.P. No. 7284 of 1964) bringing appellants 4 to 9 on record as the legal representatives of Y. Prabhakar Reddy. It is admitted before me that was done before the abatement of that appeal. It seems that no application was made in the government appeal to bring the legal representatives of the deceased
C respondent Y. Prabhakar Reddy on the record of that appeal. Both the appeals were, however, taken up for hearing together and were disposed of by a common judgment of the High Court dated February 4, 1969. The High Court dismissed the claimants' appeal, but allowed the government appeal and reduced the price of the acquired land from Rs. 12/- to Rs. 4/- per square yard "with the usual solatium and
D interest at 4 per cent as allowed by the lower court." While the government felt satisfied with that judgment, the claimants applied for a certificate which was granted on the ground that the value of the subject matter of the suit in the court of first instance was upwards of Rs. 20,000/- and the value of the subject matter in dispute on
E appeal to this Court was also upwards of that amount and the decree appealed from did not affirm the decision of the lower court. On the strength of that certificate the appellants have come up to this Court in appeal.

It has been argued by Mr. Sen on behalf of the appellants that
F as Y. Prabhakar Reddy, respondent No. 2 in the government appeal died on April 3, 1964, and his legal representatives were not brought on the record within the period of 90 days provided by law, that appeal abated thereafter and stood dismissed automatically and could not be resurrected and heard by the High Court as a cross-appeal to the claimants' appeal. The learned counsel has placed reliance on the
G decisions of this Court in *The State of Punjab* v. *Nathu Ram*,(1) *Rameshwar Prasad and others* v. *M/s Shyam Beharilal Jagannath and others*,(2) *Ramagya Prasad Gupta and others* v. *Murli Prasad*(3) and *Harihar Prasad Singh and others* v. *Balmiki Prasad Singh and others*(4) to support his argument. In particular, he has placed

H (1) [1962] 2 S.C.R. 636
(2) [1964] 3 S.C.R. 549
(3) [1973] 1 S.C.R. 63
(4) [1975] 2 S.C.R. 932

reliance on *Nathu Ram's case*(1) to fortify his argument that the specification of the shares or of the interest of the deceased Y. Prabhakar Reddy did not affect the nature of the decree and the capacity of the joint decree holders to execute the entire decree or to resist the attempt of the other party to interfere with the joint right decreed in their favour. In particular, he has relied on that portion of that decision where it has been stated that as the subject matter for which the compensation is to be calculated in such cases is one and the same, there cannot be different assessments of the amounts of compensation for the same parcel of land. So, as the appeal before the High Court was directed against the joint decree and the appellate court could not take a decision on the basis of the separate shares of the claimants, it has been argued that the whole of the government appeal should have been dismissed because of its abatement against the deceased respondent.

Now what Order XXII r. 4 (1) C.P.C. provides is that where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, 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. Sub-rule (3) provides further that where within the time limited by law no application is made under sub-rule (1), "the suit shall abate as against the deceased defendant." So as Y. Prabhakar Reddy, respondent No. 2 in the government appeal, died on April 3, 1964, and an application was not made to bring his legal representatives on the record within the specified time limit, the appeal automatically abated as against the deceased respondent, and it is not correct to say that the appeal automatically stood dismissed against the surviving respondents because of that default. The question whether the "right to sue" survived against the surviving respondents alone, was a matter for the appellate court to examine and decide after hearing the parties, with due regard to the question of jointness or otherwise of the decree and the further question whether there was any possibility of two contradictory decrees etc. As that was not done by the High Court where the government appeal was pending, there is no justification for the argument that the appeal automatically stood dismissed after the expiry of the period of 90 days from the death of respondent Y. Prabhakar Reddy on April 3, 1964 because of the abatement of the appeal against him.

But even if it were assumed that the government appeal deserved to be dismissed as a whole because of its abatement against the

(1) [1962] 2 S.C.R. 636.

A deceased respondent, there is no justification for Mr. Sen's further argument that the High Court's decree dated February 4, 1969, was a nullity merely because it was passed against a dead person, namely, Y. Prabhakar Reddy. It has to be appreciated that a decree against a dead person is not necessarily a nullity for all purposes. It will be sufficient to say that such a decree has been held to be a nullity because B it cannot be executed against his legal representative for the simple reason that he did not have a full opportunity of being heard in respect of it, and the legal representative can not be condemned unheard. So if a respondent to an appeal dies, and the appeal abates because of the failure to bring his legal representative on the record within the C time limited by law, and the appellate court loses sight of that development or ignores it, it will still be permissible for the court hearing the appeal to bring his legal representative on the record on an application to that effect and to examine any application that may be made for condonation of the delay. It is also permissible, and is in fact the common practice, to remand the case for disposal according to law D to the court in which it was pending at the time of the death of the deceased party. The law has therefore provided, and accepted, modes for reopening and hearing the appeal in such cases.

The basic fact remains that a decree against a dead person is treated as a nullity because it cannot be allowed to operate against his E legal representative when he was never brought on the record to defend the case. Any other view would not be possible or permissible for it would fasten on him a liability for which he did not have any hearing. So while the law treats such a decree as a nullity qua the legal representative of the deceased defendant or respondent, there is nothing to prevent him from deciding that he will not treat the decree as a F nullity, but will abide by it as it stands, or as it may be modified thereafter on appeal. If a legal representative adopts that alternative or course of action, it cannot possibly be said that his option to be governed by the decree is against the law or any concept of public policy or purpose, or the public morality. It is thus a matter entirely G at the discretion of the legal representative of a deceased respondent against whom a decree has been passed after his death to decide whether he will raise the question that the decree has become a nullity, at the appropriate time, namely, during the course of the hearing of any appeal may be filed by the other party, or to abandon that obvious technical objection and fight the appeal on the merits. He may do H so, either because of his faith in the strength of his case on the merits, or because of incorrect legal advice, or for the reason that he may not like to rely on a mere technical plea, or because in the case of

cross-appeals, he may have the impression that bringing the legal representative of the deceased respondent on record in an appeal by a co-appellant will enure for the benefit of or be sufficient for purposes of the cross-appeal. An abandonment of a technical plea of abatement and the consequential dismissal of the appeal, is therefore a matter at the discretion of the legal representative of the deceased respondent and there is no justification for the argument to the contrary. It is equally futile to argue that an appellate court is denuded of its jurisdiction to hear an appeal in which one of the respondents has died and the right to sue does not survive against the surviving defendant or defendants alone merely because no application has been made to bring his legal representative on the record when no objection to that effect is raised by any one.

But, as is equally obvious, it will not be fair to draw an inference as to the abandonment of such a plea of abatement unless there is clear, sufficient and satisfactory evidence to prove that the legal representative of the deceased respondent was aware of it and abandoned it wilfully. The following facts have been well established in this respect in the present case.

It will be recalled that the Subordinate Judge made his order in the reference under section 18 of the Land Acquisition Act on July 30, 1963, and the memorandum of the government appeal was filed in the High Court on December 7, 1963. The claimants filed their cross-appeal No. AS 296 of 1964 soon after and, at any rate, before April 3, 1964. It will also be re-called that Y. Prabhakar Reddy died on April 3, 1964. While he was respondent No. 2 in the government appeal, he was a co-appellant in the claimants' appeal. As has been stated, the claimants brought Y. Prabhakar Reddy's legal representatives on the record in their appeal under an order of the High Court dated July 14, 1964, and they were arrayed as appellants Nos. 4 to 9. It is admitted that that appeal therefore never abated and the array of the parties was full and complete. As has been pointed out, the legal representatives of Y. Prabhakar Reddy were not brought on record in the government appeal. It cannot be denied, however, that they knew of Y. Prabhakar Reddy's death on April 3, 1964, for he was their ancestor. They also knew that they had been brought on record as his legal representatives in the claimants' appeal because of the High Court's specific order to that effect dated July 14, 1964 in C.M.P. No. 7282 of 1964 where they were represented by counsel. They thus knew that Y. Prabhakar Reddy's legal representatives were not brought on record in the government appeal, and that it stood abated against them because of the expiry of the time limited by law

A in that respect. Even so, they did not make an application to the High Court for the dismissal of the appeal on the ground that it could not survive against the surviving respondents because of that basic defect, in the facts and circumstances of that case. That in fact continued to be the position for a long period of some five years. It is B not disputed that the appeals came up for hearing in the High Court on or about February 4, 1969, but, even then, no objection was taken to the hearing of the government appeal in spite of the fatal defect in its constitution. On the other hand, when the two appeals were taken up for hearing, the High Court heard, without any objection, not only the counsel for the appellants in the government appeal, but also C C. Padmanabha Reddy, who was counsel for the respondents in that appeal and for the reconstituted array of appellants in the claimants' appeal. The legal representatives of Y. Prabhakar Reddy and their counsel were thus aware of the fact that the government appeal had abated against respondent Y. Prabhakar Reddy, and it will not be unfair to assume that they, or, at any rate, their counsel knew that it D was open for them to contend that the appeal was liable to dismissal for that reason. Two courses of action were therefore open to them : (i) to move the High Court for the dismissal of the government appeal, or (ii) to allow that appeal to be heard and decided on the merits and to abide by any decree which the High Court might pass in the two appeals. The legal representatives and their counsel did not choose to E adopt the first course of action, and it will be fair and reasonable to hold that they wilfully chose the second course of action. That was why their counsel C. Padmanabha Reddy, who was counsel for all the respondents in the government appeal, and for all the appellants in the claimants' appeal, argued both the appeals on the merits. The High F Court heard and decided the cross-appeals by its impugned judgment dated February 4, 1969, and it will be a proper conclusion for me to reach that the legal representatives of Y. Prabhakar Reddy wilfully abandoned any plea that might have been available to them on the basis of the abatement of the government appeal against the deceased respondent.

G

It was only after the judgment of the High Court went aaginst them, that the legal representatives of Y. Prabhakar Reddy decided to take up the question of abatement, for the first time, in the petition which they and the other claimants' filed under section 104-110 and order 45 rules 2 and 3 C.P.C. It is significant that they did not even then H ask the High Court to review its judgment and grant them relief on the ground that Y. Prabhakar Reddy had died and the decree against him was a nullity in so far as they were concerned. The High Court was

simply asked to allow the application for the certification of the appeal on the ground that the value of the subject matter was upwards of Rs. 20,000/- and it made an order to that effect.

In all these facts and circumstances, I have no doubt that any plea that may have been available to the legal representatives of the deceased Y. Prabhakar Reddy in the government appeal because of its abatement, was wilfully abandoned by them. Any other view of the matter will be unfair to the present respondents, because if any such objection had been taken in the High Court, they would have made an application for the setting aside of the abatement and condoning the delay, for whatever it was worth. It has to be appreciated that a point of defence which has been wilfully or deliberately abandoned by a party in a civil case, at a crucial stage when it was most relevant or material, cannot be allowed to be taken up later, at the sweet will of the party which had abandoned the point, or as a last resort, or as an after thought. In fact in a case where a point has been wilfully abandoned by a party, even if, in a given case, such a conclusion is arrived at on the basis of his conduct, it will not be permissible to allow that party to revoke the abandonment if that will be disadvantageous to the other party.

Mr. Sen has however made a reference to *Gaekwar Baroda State Railway* v. *Hafiz Habib-ul-haq and others*(1) and *Thakore Saheb Khanji Kashari Khanji* v. *Gulam Rasul Chandbhai*(2) for the purpose of showing that the government appeal was not at all maintainable in the High Court because of its abatement against respondent Y. Prabhakar Reddy as that was a matter relating to the jurisdiction of the High Court which could not have been abandoned. The provisions of section 86 C.P.C. came up for consideration in both those cases and it was held that as the section was based upon public policy or purpose, it was not open to a ruling chief to waive its provisions. Those were therefore different observations which have no bearing on the present controversy for, as has been stated, the decision of the legal representative of a deceased respondent to be bound by a decree in spite of its abatement does not involve any question of public policy.

Mr. Sen's reference to *Maharana Shri Davlatsinghji Thakore Saheb of Limdi* v. *Khachar Hamir Mon*,(3) *Town Municipal Council, Athani*

(1) 65 Indian Appeals 182
(2) A.I.R. 1955 Bombay 449
(3) I.L.R. 34 Bombay 171.

A v. *Presiding Officer, Labour Court, Hubli and others,*(1) *Simpson* and *another* v. *Crowle and others*(2) *Chief Justice of Andhra Pradesh and another* v. *L. V. A. Dikshitula* and *others*(3) and *P. Dasa Muni Reddy* v. *P. Appa Rao*(4) is equally futile because they were cases of inherent lack of jurisdiction in the court concerned or raised the question of the bar of limitation.

B

Mr. Sen has placed reliance on *Punjab State* v. *Sardar Atma Singh*(5) and *State of Rajasthan and others* v. *Raghuraj Singh*(6) to show that where an application is not made to bring the legal representative of the deceased respondent on the record of a cross-appeal, that appeal will abate, and it will not be permissible for the appellant to claim the benefit C of the fact that the legal representative of the deceased respondent had been brought on the record in the cross-appeal filed by him. I have gone through the cases, but they are clearly distinguishable. The respondent in both cases died during the pendency of the first appeal, and an objection as to abatement was taken during the course of the hearing, so that there was no question of abandoning the objection in either of these D cases and it was permissible to apply to the court for the usual consequences which follow for non-compliance with the provisions of Order XXII rules 3 and 4 C.P.C. Those decisions cannot therefore be of any help in a case like this.

It would thus follow that as the plea of abatement of the govern- E ment appeal against respondent Y. Prabhakar Reddy and its dismissal as a whole for that reason, was wilfully abandoned by the present respondents in the High Court, it will not be fair and reasonable to allow them to take it up the facts and circumstances of this case merely because the decision of the High Court has gone against them.

F That leaves for consideration the question whether the finding of fact of the High Court that the present appellants were entitled to compensation at Rs. 4/- per square yard suffers from any such error as to require interference by this court. Mr. Sen has argued that the High Court went wrong in interfering with the finding of the Subordinate Judge and in excluding the sale deeds Exs. A 1 and A 2 altogether from G consideration when they were important and were by themselves sufficient to uphold the finding of the Subordinate Judge that the market value of the land was Rs. 12/- per square yard.

(1) [1970] 1 S.C.R. 51.
(2) [1921] 3 K.B. 243.
(3) A.I.R. 1979 S.C. 193.
(4) [1975] 2 S.C.R. 32.
(5) A.I.R. 1963 Punjab 113.
(6) A.I.R. 1968 Rajasthan 14.

I find from the impugned judgment that the High Court first took into consideration all those factors which were in favour of the claimants, namely, the fact that the land was situated within the municipal limits of Kurnool town, it was within easy reach of the government hospitals, the railway station, the Medical College and the State Bank etc., it was suitable as a building site etc. The High Court also took due notice of the fact that although Kurnool was not made the capital of Andhra Pradesh, it was a growing town and had an importance of its own. It then examined those facts which persuaded it to reduce the market value. In doing so, it took note of the fact that the land under acquisition had been bought by the Claimants themselves for Rs. 26,000/- on October 30, 1961, just eight months before the issue of the notification for its acquisition. That rate worked out to Rs. 2/- per square yard. Then the High Court took into consideration the other facts that the claimants did not effect any improvement in the land after its purchase, it was not their case that the previous owner had sold it for any compelling reason, the claimants were not even responsible for preparing the lay out plan for the locality (which had been accepted by the municipality even before they had purchased the land) and that they merely obtained the sanction of the Town Planning department to the lay out which had already been sanctioned. The High Court carefully examined the various sale agreements Exs. A3, A5, A7, A10, A12 and A14, and rejected them on the ground that they did not appear to be genuine and had mostly been executed on the same date. That left the two registered sale deeds Exs. A1 and A2 for consideration on which Mr. Sen has placed considerable reliance. The High Court noticed that they were for the sale of very small portions of land, namely, 3 cents and 5 cents, and did not think it proper to make them the basis for determining the value of a far larger piece of land. It cannot therefore be said that the High Court ignored or misread any important piece of evidence in arriving at its finding. As has been stated, the appellants bought the land for Rs. 26,000/-, which worked out to Rs. 2/- per square yard, and the High Court doubled that rate, and raised it to Rs. 4/- per square yard even though the acquisition took place within a matter of the next eight months and the appellants did nothing to improve its value. To say the least, such a finding cannot be said to have been vitiated for any reason whatsoever so as to require reconsideration here.

As I find no merit in the appeal, it is hereby dismissed with no order as to costs.

DESAI, J.—I have carefully gone through the judgment prepared by my learned brother Shinghal, J. and I am in full agreement with him that the appeal be dismissed. This separate opinion becomes necessary be-

A cause in my opinion in the facts and circumstances of this case the Government appeal had not abated at all.

All the relevant facts have been extensively set out by my learned brother and it is not necessary to repeat them here. Even the nomenclature in respect of the two appeals as given by him may be adopted for facility of appreciating the point under discussion.

B After the award by the Subordinate Judge, two appeals came to be preferred, one by the Revenue Divisional Officer styled as 'Government appeal', and another by the claimants styled as 'claimants appeal'. Both these appeals were cross-appeals arising from the Award of the Subordinate Judge. During the pendency of the appeals in the High Court, C Y. Prabhakar Reddy, one of the three claimants, being an appellant in the claimants' appeal and respondent in Government appeal, died on April 3, 1964 and upon an application made to the Court in the claimants' appeal his legal representatives appellants 4—9 were brought on record. Admittedly, the legal representatives of deceased Y. Prabhakar Reddy one of the respondents in Government appeal were not brought D on record till both the appeals were disposed of by a common judgment rendered on February 4, 1969. The High Court by its judgment dismissed the claimants' appeal and partly allowed the Government appeal reducing the compensation payable in respect of the acquired land from Rs. 12/- to Rs. 4/- per sq. yd. Original two claimants and heirs of E deceased claimant Y. Prabhakar Reddy preferred the present appeal to this Court by certificate granted by the High Court under Article 133 of the Constitution.

Mr. A. K. Sen contended that as heirs of one of the claimants Y. Prabhakar Reddy, respondent in Government appeal, were not brought on record within the prescribed period of limitation after his death pend- F ing the appeal, not only the Government appeal abated against Y. Prabhakar Reddy but in view of the decision of this Court in *State of Punjab* v. *Nathu Ram*,(1) the appeal abated as a whole and, therefore, the judgment of the High Court partly allowing the Government appeal and reducing the compensation from Rs. 12/- to Rs. 4/- per sq. yd. G of the acquired land must be set aside on this short ground alone.

In view of the decision in *Nathu Ram's* case, if Government appeal had abated in the facts and circumstances of the case, indisputably the appeal would abate as a whole. The substance of the matter is whether in the facts and circumstances of this case and keeping in view the relevant provisions of law the Government appeal had at all abated.

H There were cross appeals arising from the same Award before the High Court. The record does not show that any order was made for

(1) [1962] 2 S.C.R. 636.

consolidating these appeals as is usually done when both the parties to a decree prefer appeals and which are styled as cross-appeals. Both the parties to the original proceeding adopt rival positions in cross appeals. The claimants in their appeal moved the High Court to enhance the compensation from Rs. 12/- per sq. yd. awarded by the Subordinate Judge to a higher amount as claimed by them. The Government in its appeal against the same Award moved the High Court to reduce the compensation from Rs. 12/- to Rs. 2/- per sq. yd. The contest between the parties would be, what in the circumstances of the case should be adequate compensation being the market value of the land acquired by the Government on the relevant date (see *Nathuram's case*).

Undoubtedly, one of the original claimants Y. Prabhakar Reddy being one of the appellants in the claimants' appeal died and specifically his legal representatives were brought on record within the prescribed period of limitation and that was done much prior to the date of hearing of the appeals by the High Court. As is notorious, the inadvertence, if not down right indifference, of those incharge of the Government appeal is demonstrably established because the counsel incharge of the Government appeal must have received the notice moved on behalf of the appellants—claimants seeking to bring the legal representatives of deceased Y. Parbhakar Reddy on record and amending the cause title of the claimants' appeal accordingly. This was sufficient notice to the counsel incharge of the Govrenment appeal that the same gentleman was one of the respondents in Government appeal and his death having been notified, as a necessary corollary his heirs will have to be brought on record in Government appeal. Nothing more was required to be done by the counsel incharge of Government appeal except to bodily adopt those who applied to come on record in place of deceased Y. Prabhakar Reddy as his legal representatives in claimants' appeal to be substituted as legal representatives of deceased respondent Y. Prabhakar Reddy in Government appeal. This was not done. It may also be mentioned that both the appeals were heard together and were disposed of by a common judgment. As has been pointed out by Shinghal, J., no contention was taken on behalf of the respondents in Government appeal that on account of the failure of Government to bring the heirs of deceased Y. Prabhakar Reddy on record within the time prescribed, the appeal has abated but on the contrary Government appeal was allowed to be proceeded in the presence of all parties including legal representatives of Y. Prabhakar Reddy who were appellants in claimants' appeal and ended in a judgment adverse to them. What is the consequence of failure to raise this contention has been examined by my learned brother in detail and I am in agreement with his conclusion.

A Now, Order 22, Rule 4 read with Order 22, Rule 11 of the Code of Civil Procedure require that the appellant in Government appeal should have brought the legal representatives of respondent deceased Y. Prabhakar Reddy, on record. There is no controversy that rule 4 of Order 22 read with rule 11 would be attracted in this case, and as admittedly the B legal representatives of deceased Y. Prabhakar Reddy, the respondent in Government appeal, were not brought on record till the appeal was disposed of, ordinarily the appeal would abate.

The substantial question is : where cross appeals are preferred against a common decree or an Award and in the cross appeals the parties are arrayed in rival positions and where one party as appellant dies C and his legal representatives are brought on record though those very legal representatives are not substituted in his place which he adopted as respondent in the cross appeal, would the cross appeal abate ?

This question may be examined first on principle. The basic principle underlying order 22, rules 3 and 4 which on account of the provi- D sion contained in order 22, rule 11 apply to appeals, is indisputably a facet of natural justice or a limb of *audi altrem partem* rule. It is a fundamental rule of natural justice that a man has a right to be heard—*audi altrem partem*—where a decision affecting him or his interest is to be recorded. It hurts one's sense of justice, fairness and reason that a E decision one way or the other is recorded affecting a party without giving that party an opportunity of being heard. This rule embraces the whole notion of fair procedure and the rule requiring a hearing is of almost universal validity. It has made a serious inroad in administrative decisions. It should enjoy a top place in a judicial proceeding.

The first limb of this rule *audi altrem partem* is that a person must be F given an opportunity of being heard before a decision one way or the other affecting him is recorded. As a corollary to this rule it is provided in the Code of Civil Procedure that where a party to the proceeding dies pending the proceeding and the cause of action survives, the legal representatives of the deceased party should be brought on record G which only means that such legal representatives must be afforded an opportunity of being heard before any liability is fastened upon them. It may be that the legal representatives in a given situation may be personally liable or the estate of the deceased in their hands would be liable and in either case a decision one way or the other, adverse or favourable to them, cannot be recorded unless they are given an opportunity of H being heard. Order 22, rules 3 and 4 codify these procedural safeguards translating into statutory requirement one of the principles of natural justice.

If this is the discernible principle underlying order 22, rules 3 and 4 it has been demonstrably established by interpretation put on these two rules. Original view was that all legal representatives of a deceased plaintiff or defendant must be substituted on the pain of the action abating. With utmost diligence from a multitude some one may escape notice and the consequent hardship in abatement of action led this Court to assert the principle that where some legal representatives are brought on record permitting an inference that the estate is adequately represented, the action would not abate though it would be the duty of the other side to bring those legal representatives on record who are overlooked or missed even at a later date. When the aforementioned two provisions speak of legal representatives it only means that if after diligent and *bona fide* enquiry the party liable to bring the legal representatives on record ascertains who are the legal representatives of a deceased party and brings them on record within the time limited by law, there is no abatement of the suit or appeal on the ground that some other legal representatives have not been brought on record, because the impleaded legal representatives sufficiently represent the estate of the deceased and the decision would bind not only those impleaded but the entire estate including the interest of those not brought on record. This view has been consistently adopted by this Court in *Daya Ram & Ors.* v. *Shyam Sundari*(1) *N. K. Mohammad Sulaiman* v. *N. C. Mohammad Ismail & Ors.*;(2) and *Harihar Prasad Singh & Ors.* v. *Balmiki Prasad Singh & Ors.*(3) The principle deducible from these decisions is that not only the interest of the deceased was adequately taken care of by those who were on record but they had the opportunity to put forth their case within permissible limits. Neither the case of the deceased nor of his successors-in-interest has gone by default. In other words, the principle is that if the deceased had as a party a right to put forth his case, those likely to be affected by the decision on death of the deceased had the same opportunity to put forth their case and even if from a large number having identical interest some are not brought on record those who are brought on record would adequately take care of their interest and the cause in the absence of some such would not abate. In legal parlance this procedure affords an opportunity of being heard in all its ramification before a decision on the pending list is taken.

Another principle in this behalf which has found recognition of the Courts is that if the legal representatives of the deceased party are before the Court in the same action even if in another capacity, failure to

(1) [1965] 1 SCR 231.
(2) [1966] 1 SCR 937.
(3) [1975] 2 SCR 932.

A bring them on record in a specific legal position would not result in abatement of the action. In *Mahabir Prasad* v. *Jage Ram & Ors.*,(1) this Court was called upon to consider whether where a legal representative of a deceased party is on record in another capacity, failure to implead him as legal representative of the deceased party would result in abatement of the action? In that case Mahabir Prasad, his wife B Saroj Devi and his mother Gunwanti Devi filed a suit against Jage Ram and two others for recovering rent then due in the aggregate amount of Rs. 61,750/-. The suit ended in a decree. The execution of the decree was resisted by the defendants on the plea *inter alia* that the decree was inexecutable because of the provisions of Delhi Land Reforms Act, 1954. C This contention found favour with the executing court and the application for execution was dismissed. Mahabir Prasad, one of the decree holders alone appealed against that order and impleaded Gunwati Devi and Saroj Devi as party respondents along with the original judgment-debtors. Saroj Devi died in November 1962 and Mahabir Prasad applied that the name of Saroj Devi be struck of from D the array of respondents. The High Court made an order granting the application "subject to all just exceptions". Subsequently the High Court dismissed the appeal holding that because the heirs and legal representatives of Saroj Devi were not brought on record within the period of limitation, the appeal abated in its entirety. This Court, while setting aside the order made by the High Court holding that the appeal E abated, observed as under :

> "Even on the alternative ground that Mahabir Prasad being one of the heirs of Saroj Devi there can be no abatement merely because no formal application for showing Mahabir Prasad as an heir and legal representative of Saroj Devi was made. F Where in a proceeding a party dies and one of the legal representatives is already on the record in another capacity, it is only necessary that he should be described by an appropriate application made in that behalf that he is also on record, as an heir and legal representative. Even if there are other heirs and legal representatives and no application for impleading G them is made within the period of limitation prescribed by the Limitation Act the proceeding will not abate".

The principle deducible from this decision of the Court is that where one of the legal representatives of the deceased party is before the Court at the time when the proceeding is heard but in another capacity, it is H immaterial whether he is described as such or not and even if there are other legal representatives, the cause will not abate.

(1) [1971] 3 SCR 301.

Now, when a proceeding such as a suit ends in a decree it may be that decree may partly satisfy both the parties with the result that with regard to that part of decree by which each party is dissatisfied that party may prefer an appeal challenging only that part of the decree by which it is dissatisfied. When one such party to the decree appeals and a notice of the appeal is served on the other side the respondent receiving the notice may prefer cross-objections under Order 41, Rule 22, but what is important to note is that such respondent though he may not have appealed from any part of the decree, may take any cross-objections to the decree which he could have taken *by way of appeal.* In other words, the respondent could have as well filed an appeal against that part of the decree by which he is dissatisfied but if he has not filed an appeal he can as well put forth cross-objections as contemplated by Order 41, rule 22. Parameters of cross-objections by the language of Order 41, rule 22, are limited to the contentions which could appropriately be taken in an appeal against a decree or a part of a decree. For all practical purposes cross-objections and cross-appeals have the same purpose to achieve and cover the same ground. Would they stand on a different footing in respect of death of a party either in cross-appeals or in cross-objections ?

There is a conflict of judicial opinion on the effect of substitution of legal representatives of a deceased party in cross-objections and in cross-appeals. Mulla has noted this cleavage of opinion in his Code of Civil Procedure, 13th Edition, Volume II, P. 1237, as under :

> "Where both the parties to a suit file independent appeals against the decree passed therein, and one of them dies pending the appeal, the substitution of his legal representatives in one appeal does not enure for the benefit of the other appeal which consequently abates. But where one party to a suit prefers an appeal against the decree passed therein and the other files a memorandum of cross-objections under O. 41, r. 22, what is the effect of the legal representatives of a deceased party to the proceedings being substituted in the memorandum of cross-objections, and not in the appeal ? There is a conflict of judicial opinion on this question. Where the respondent died and his legal representative was brought on record on his own application in the cross-objections and the appellant had not applied to bring him on record, it was held that the substitution of the legal representative in the cross-objection enured for the benefit of the appeal also as both the appeal and the cross-appeal (sic) were part of the same proceedings. And where

A the appellant died, and his legal representatives were brought on record in the cross-objection but not in the appeal, it was held that the substitution in the cross-appeal (sic) did not enure for the benefit of the appeal and that the latter abated".

B Decisions on which the commentary is based may now be examined in depth to sort out principle, if any, to which the cleavage of opinion is referable.

In a very early decision in *Brij Indar Singh* v. *Lala Kanshi Ram & Ors.*,(1) the Judicial Committee held that substitution of a deceased party's legal representatives in an interlocutory appeal arising from an C order made in a suit would enure for the benefit of the suit and no separate application for substitution in the suit need be made. It was in terms held that the introduction of a plaintiff or a defendant at one stage of the suit is an introduction for all stages, and that though it was done in the course of an interlocutory application as to the production D of books the same would enure for the benefit of the suit. While affirming the ratio of this decision this Court in *Rangubai Kom Shankar Jagtap* v. *Sunderabai Bharatar Sakharam Jedhe & Ors.*,(2) analysed the principle underlying Order 22, rules 3, 4 and 11 as under :

"Let us now consider the question on principle. A E combined reading of Order XXII, rr. 3, 4 and 11, of the Code of Civil Procedure shows that the doctrine of abatement applies equally to a suit as well as to an appeal. In the application of the said rr. 3 and 4 to an appeal instead of "plaintiff" and "defendant", "appellant" and "respondent" have to be read in those rules. Prima facie, therefore, if a F respondent dies and his legal representatives are not brought on record within the prescribed time, the appeal abates as against the respondent under r. 4, read with r. 11, of O. XXII of the Code of Civil Procedure. But there is another principle recognised by the Judicial Committee in the aforesaid decision which softens the rigour of this rule. The said G principle is that if the legal representatives are brought on record within the prescribed time at one stage of the suit, it will enure for the benefit of all the subsequent stages of the suit. The application of this principle to different situations will help to answer the problem presented in the present case. (1) A filed a suit against B for the recovery of possession and mesne profits. After the issues were framed, B H

(1) AIR 1917 PC 156.
(2) [1965] 3 S.C.R. 211 at 216-217.

died. At the stage of an interlocutory application for production of documents, the legal representatives of B were brought on record within the time prescribed. The order bringing them on record would enure for the benefit of the entire suit. (2) The suit was decreed and an appeal was filed in the High Court and was pending therein. The defendant died and his legal representatives were brought on record. The suit was subsequently remanded to the trial Court. The order bringing the legal representatives on record in the appeal would enure for the further stages of the suit. (3) An appeal was filed against an interlocutory order made in a suit. Pending the appeal the defendant died and his legal representatives were brought on record. The appeal was dismissed. The appeal being a continuation or a stage of the suit, the order bringing the legal representatives on record would enure for the subsequent stages of the suit. This would be so whether in the appeal the trial Court's order was confirmed, modified or reversed. In the above 3 illustrations one fact is common, namely, the order bringing on record the legal representatives was made at one stage of the suit, be it in the suit or in an appeal against the interlocutory order or final order made in the suit, for an appeal is only a continuation of the suit. Whether the appellate order confirms that of the first Court, modifies or reverses it, it replaces or substitutes the order appealed against. It takes its place in the suit and becomes a part of it. It is, as it were, the suit was brought to the appellate Court at one stage and the orders made therein were made in the suit itself. Therefore, that order enures for the subsequent stages of the suit.

A B C D E F

But the same legal position cannot be invoked in the reverse or converse situation. A suit is not a continuation of an appeal. An order made in a suit subsequent to the filing of an appeal at an earlier stage will move forward with the subsequent stages of the suit or appeals taken therefrom; but it cannot be projected backwards into the appeal that has already been filed. It cannot possibly become an order in the appeal. Therefore, the order bringing the legal representatives of the 7th respondent on record in the final decree proceedings cannot enure for the benefit of the appeal filed against the preliminary decree. We, therefore, hold that the appeal abated so far as the 7th respondent was concerned."

G H

A In *Sankaranaraina Saralaya* v. *Laxmi Hengsu & Ors.*,(1) two independent appeals were filed against the decree of the trial court in the suit, one appeal being by the plaintiff and the other appeal by defendant 2. In the appeal filed by defendant 2 the legal representatives of the respondent, viz., the plaintiff not having been brought on record within the time prescribed by law, the appeal abated, and B when that abatement was sought to be set aside, the Court found that there was no ground for allowing the application. It was then contended that because the legal representatives of the appellant in other appeal (who was undoubtedly the plaintiff in the suit) have been added within the time allowed, it should be taken that those legal representatives have also been added in place of the deceased C respondent by defendant 2. Negativing this contention a learned single Judge of the Madras High Court held that there is no interdependence between the two appeals and the analogy of an appeal and a memorandum of cross-objection in the same appeal does not hold good in case of two independent appeals where the Court has to D deal with two separate and independent appeals though arising from the same suit and the parties adopt rival positions. The Court distinguished the decision in *Brij Indar Singh's case* (supra) by posing a question to itself : 'Can it be said in the present case that what was done in one appeal could enure for the benefit of another appeal unless the latter appeal can be deemed to be a continuation or a further E stage of the appeal in which the legal representatives were brought on record' and answered it in the negative observing that it is not possible to extend the principle laid down by Judicial Committee in *Brij Indar Singh's case* (supra)

In *Dasondha Singh* v. *Shadi Ram Sardha Ram & Ors.*(2) there were cross appeals arising from the same decree before the Court F and the plaintiff Shadi Ram was an appellant in the appeal preferred by him and when he died his legal representatives were impleaded within the prescribed time. In the appeal preferred by the defendant the application for impleading Shadi Ram's legal representatives which was made beyond the prescribed period of limitation and the Court having declined to condone the delay, the appeal abated. It G was contended that as the legal representatives of Shadi Ram were impleaded in his appeal and as both these appeals arose out of the same judgment, the legal representatives of Shadi Ram being before the Court it is a mere formality to make necessary endorsement on record and, therefore. the appeal preferred by defendant 2 would not H abate. The Court negatived the argument relying upon a Division Bench decision in *Punjab State* v. *Atma Singh.*(3).

(1) AIR 1931 Mad. 277 (2) AIR 1964 Punjab 336
(3) A.I.R. 1963 Punj. 113.

In *State of Rajasthan & Ors.* v. *Raghuraj Singh,*(1) two cross-appeals came to be filed against the decision of the trial court to the Rajasthan High Court. During the pendency of these appeals the plaintiff who was appellant in his appeal died and his legal representatives were impleaded within time. It appears that the legal representatives of the plaintiff who was respondent in defendant's appeal were not substituted and a preliminary objection was taken that the defendant's appeal abates or has abated. The defendant countered this submission by saying that as plaintiff's legal representatives were before the Court as brought on record and substituted in the plaintiff's appeal, it would be permitting a technicality to hold that the defendant's appeal has abated. The Court examined two separate limbs of the submission : (1) what is the effect of substitution of deceased party's legal representatives in cross-objections though no such substitution was made in the main appeal; and (2) would the effect be different if instead of cross-objections there were cross-appeals. A Division Bench of the Rajasthan High Court held that cross-objections being part of the same proceedings and form part of the same record, substitution of legal representatives in the cross-objections would enure for the benefit of the main appeal. But in the case of cross-appeals, after referring to *Sankaranaraina Saralaya's* case, (supra) the High Court held that substitution of legal representatives of a deceased party in one appeal cannot enure for the benefit of the cross-appeal and, therefore, defendant's appeal was held to have abated.

An analysis of the aforementioned decisions in search of a common thread or a deducible principle has not proved helpful.

The following conclusions emerge from these decisions :

(1) If all legal representatives are not impleaded after diligent search and some are brought on record and if the Court is satisfied that the estate is adequately represented meaning thereby that the interests of the deceased party are properly represented before the Court, an action would not abate.

(2) If the legal representative is on record in a different capacity, the failure to describe him also in his other capacity as legal representative of the deceased party would not abate the proceeding.

(3) If an appeal and cross-objections in the appeal arising from a decree are before the appellate court and the respondent dies, substitution of his legal representatives in the cross-objections being part of the same record, would enure for the benefit of the appeal and the failure of the appellant to implead the legal representatives of the

(1) AIR 1968 Raj. 14.

A deceased respondent would not have the effect of abating the appeal but not *vice versa.*

(4) A substitution of legal representatives of the deceased party in an appeal or revision even against an interlocutory order would enure for the subsequent stages of the suit on the footing that appeal is a continuation of a suit and introduction of a party at one stage of B a suit would enure for all subsequent stages of the suit.

(5) In cross-appeals arising from the same decree where parties to a suit adopt rival positions, on the death of a party if his legal representatives are impleaded in one appeal it will not enure for the benefit of cross-appeal and the same would abate.

C Is it possible to ratiocinate these decisions? Apparently the task is difficult. Now, if the object and purpose behind enacting Order 22, rules 3 and 4 are kept in forefront conclusions Nos. 1 to 4 would more or less fall in line with the object and purpose, namely, no decision can be recorded in a judicial proceeding concerning the interests of a party to a proceeding without giving such party or his D legal representatives an opportunity of putting forth its/their case. To translate this principle into action denuding it of its ultra technical or harsh application, the Courts held that if some legal representatives are before the Court, or they are before the Court in another, capacity or are brought on record at some stage of the suit, the action will not abate even if there is no strict compliance with the E requirements of rules 3 and 4. The distinction in the process drawn between the substitution of legal representatives in cross-objections and cross-appeal defies ratiocination. Cross-appeal and cross-objections provide two different remedies for the same purpose and that is why under Order 41, rule 22, cross-objections can be preferred in respect of such points on which that party could have preferred an F appeal. If such be the position of cross-objections and cross-appeal a differentiation in the matter of their treatment under rules 3 and 4 cannot be justified merely on the ground that in case of cross-objections they form part of the same record while cross-appeals are two independent proceedings.

G Now, if the discernible principle underlying rules 3 and 4 of Order 22 is that the legal representatives of the deceased likely to be affected one way or the other by the decision in appeal must be before the Court and must be heard before a decision affecting their interests is recorded it would stand fully vindicated when in cross-appeals a party occupying the position of an appellant in one appeal and respondent in the H other appeal dies and his legal representatives are brought on record in the appeal in which he is the appellant and not in the other appeal wherein he is a respondent because the subject-matter of both the

appeals being the decree under attack, they have an opportunity to support the decree in their favour and question the correctness of the decree adverse to them. Even if they were brought on record as legal representatives of the deceased in his capacity as respondent in the cross-appeal, they could not have further advanced their case nor could they have done anything more than what they would do in their capacity as legal representatives of the deceased appellant unless they were precluded from contending that they being not on record cannot support or controvert the decree. They have thus the fullest opportunity of putting forth their grievance against and in support of the decree. Their position was not the least likely to be affected one way or the other even if they were not formally impleaded as legal representatives of the deceased in his capacity as respondent. To say that cross-appeals are independent of each other is to overlook the obvious position which parties adopt in cross-appeals. Interdependence of cross-appeals is the same as interdependence of appeal and cross-objections because as in the case of appeal and cross-objections a decision with regard to appeal would directly impinge upon the decision in cross-objections and *vice versa*. Indubitably the decision in one of the cross-appeals would directly impinge upon the decision in the other because both ultimately arise from the same decree. This is really the interdependence of cross-appeals and it is impossible to distinguish cross-appeals from appeal and cross-objections. Unfortunately this interdependence was overlooked by the Madras High Court when the scope of cross-appeals arising from the same decree and appeal and cross-objections in respect of the same decree were not examined in depth in *Sankaranaraina Saralaya's case* (supra). This approach is merely an extension of the principle well recognised by Courts that if legal representatives are before the Court in the given proceeding in one capacity it is immaterial and irrelevant if they are not formally impleaded as legal representatives of the deceased party in another capacity. Shorn of embellishment, when legal representatives of a deceased appellant are substituted and those very legal representatives as legal representatives of the same person occupying the position of respondent in cross-appeal are not substituted, the indisputable outcome would be that they were on record in the connected proceeding before the same Court hearing both the matters, in one capacity though they were not described as such in their other capacity, namely, as legal representatives of the deceased respondent. To ignore this obvious position woud be giving undue importance to form rather than substance. The anxiety of the Court should be whether those likely to be affected by the decision in the proceeding were before the Court having full opportunity to canvass their case. Once that is satisfied it can be

A safely said that the provisions contained in rules 3 and 4 of Order 22 are satisfied in a given case. To take another view would be to give an opportunity to the legal representatives of a deceased party in an appeal having had the fullest opportunity to canvass their case through the advocate of their choice appearing in cross-appeals for them and having canvassed their case and lost, to turn round and con-
B tend that they were not before the Court as legal representatives of the same person in his other capacity, namely, respondent in the cross-appeal. In other words, those legal representatives were before the Court all throughout the hearing of the appeal as parties to the appeal and canvassed their case and were heard through their advocate and
C they had the full opportunity to put forth whatever contentions were open to them in the appeals and to contest the contentions advanced against them by the opposite side and yet if the other view is taken that as they were not formally impleaded as legal representatives of the deceased respondent in the cross-appeal that appeal has abated, it would be wholly unjust. It is very difficult to distinguish on principle
D the approach of the Court in appeals and cross-objections and in cross-appeals in this behalf. No principle of law can distinguish this devigational approach. The cases which have taken the view that in cross-appeals the position is different than the one in appeal and cross-objections do not proceed on any discernible legal principle. Nor can they be explained by any demonstrable legal principle but in fact
E they run counter to the established legal principle.

In the present case the legal representatives of deceased Y. Prabrakar Reddy were brought on record in the claimants' appeal. Through their advocate they were contending before the High Court that not only the compensation should be enhanced but in reply to the sub-
F missions of the counsel for the State in their appeal they contended that no case was made out for reducing the compensation. Both the appeals were heard together and not one after the other. Therefore, the legal representatives of the deceased Y. Prakhakar Reddy were all throughout before the Court, of course in one capacity, viz., as legal representatives of deceased appellant, but not so described as
G legal representatives of the deceased respondent. That cannot make any difference. Therefore, the appeal has not abated.

On merits, I agree with my learned brother Shinghal, J. that the compensation as awarded by the High Court represents the market value of the land on the date of the Notification under s. 4 of the Land
H Acquisition Act and no case is made out for interfering with the same. Accordingly, I agree with the final order that the appeal be dismissed with no order as to costs.

P.B.R. *Appeal dismissed.*

M GIPF—253 SCI/79—16-11-79—2,500