2025 INSC 1283

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO……OF 2025
(Arising out of Special Leave Petition (Civil) No. 9947 of 2024)

VIKRAM BHALCHANDRA GHONGADE APPELLANT

VERSUS

THE STATE OF MAHARASHTRA & ORS. RESPONDENTS

J U D G M E N T

ATUL S. CHANDURKAR, J.

1. Application seeking permission to appear and argue in-person is allowed.

2. Leave granted.

3. The appellant, who is the legal heir of the original plaintiffs, seeks to execute the decree passed by the trial Court in favour of the original plaintiffs. The executing Court has, however, refused to permit execution of the decree passed by the trial Court on the ground that the appeal preferred by the defendant Nos. 4 and 5 could not be stated to have abated notwithstanding

the death of defendant Nos. 4 and 5 prior to hearing of the first appeal. The said appeal having been decided on merits and the decree passed by the trial Court having been modified, the decree passed by the trial Court could not have been executed.

4. The facts lie in a narrow compass. It is the case of the appellant that his predecessor- Mr. Arjunrao Thakre was allotted agricultural land from Survey Nos.106 and 107/1 situated at Village Takarkheda, Taluka Arvi, District Wardha, Maharashtra being an Ex-Army Serviceman. After his death, it was alleged that the said land was re-allotted by the Collector, Wardha to the defendant Nos.3 to 5. The legal heirs of late Mr. Arjunrao Thakre filed RCS No.181 of 2001 for a declaration that the allotment of the said land in favour of defendant Nos.3 to 5 was illegal. The trial Court vide its judgment dated 14.08.2006 decreed the suit by holding the allotment of the suit land in favour of defendant Nos.3 to 5 to be illegal. It also declared that the predecessor of the plaintiffs had been allotted the said land and thus, his legal heirs were the owners of the same. Accordingly, a decree for possession of the said land was passed in their favour.

5. The defendant Nos.4 and 5 being aggrieved by the aforesaid decree preferred an appeal under Section 96 of the Code of Civil Procedure, 1908 (for short, “the Code”). Before the

appeal could be heard, the defendant No.4 died on 27.10.2006, while the defendant No.5 died on 20.09.2010. This fact was not brought to the notice of the first appellate Court, which heard the counsel for the parties on 28.09.2010. The first appeal was partly allowed on 20.10.2010. The decree passed by the trial Court was modified and the plaintiffs were held entitled only to a portion of the lands that had been allotted to Mr. Arjunrao Thakre. The original plaintiffs being aggrieved by the aforesaid decree of the first appellate Court preferred a second appeal under Section 100 of the Code. The said appeal came to be disposed of by the Registrar (Judicial) as abated against defendant Nos. 4 and 5 on the ground that they had expired during pendency of the first appeal and their legal heirs had not been brought on record within the limitation period. The original plaintiffs sought restoration of the second appeal by urging that the first appeal preferred by defendant Nos.4 and 5 itself had abated as the said defendants had died during pendency of the first appeal and their legal heirs had not been brought on record. It was, thus, urged that the judgment of the first appellate Court was a nullity as the appeal filed by the said defendants had abated. The High Court vide its order dated 03.12.2012 noted these facts and by observing that the said factual position was not in dispute, held

that the second appeal could not have been dismissed as abated. The second appeal was accordingly restored. The original plaintiffs thereafter sought to withdraw the second appeal by urging that the first appeal preferred by defendant Nos.4 and 5 itself had abated and the judgment of the trial Court was in operation. The second appeal was, accordingly, dismissed as withdrawn.

6. The appellant thereafter sought to execute the decree passed by the trial Court on 14.08.2006. He, accordingly, filed Regular Darkhast No.22 of 2022 before the executing Court. The executing Court issued notices to the judgment debtors and thereafter heard the parties. The appellant urged that since the first appeal preferred by defendant Nos.4 and 5 had abated, the decree passed by the trial Court was liable to be executed. The executing Court however found that the defendant No.5 had expired on 20.09.2010 and the first appeal had been decided on 20.10.2010. After the death of defendant No.5 on 20.09.2010, there was a period of ninety days for bringing his legal heirs on record. As the first appeal was decided prior to the expiry of the period of ninety days, it could not be said that the first appeal had abated by virtue of the death of defendant No.5. It further observed that if the first appeal would have been decided after

19.12.2010, then it could be said that it had abated. The executing Court, therefore, held that the decree passed by the trial Court having merged with the decree passed by the first appellate Court, the appellant was not justified in seeking execution of the decree passed by the trial Court. The execution application preferred by the appellant came to be dismissed with costs.

7. The appellant being aggrieved by the aforesaid order approached the High Court by filing Writ Petition No. 5791 of 2023. The learned Judge of the High Court on 11.03.2024 upheld the order passed by the executing Court and dismissed the said writ petition. Being aggrieved, the appellant has come up in appeal.

8. The appellant-in-person submits that the defendant No.4 having expired on 27.10.2006 and the defendant No.5 having expired on 20.09.2010, their legal heirs were never brought on record. The first appellate Court heard the learned counsel for the parties on 28.09.2010, which was after the death of both the defendants. The said appeal was partly allowed on 20.10.2010. Thus, when the appeal was decided, both the appellants, namely defendant Nos. 4 and 5 had expired and their legal heirs had not been brought on record. As a result, the adjudication by the first

appellate Court was a nullity and the decree passed by it on 20.10.2010 could not have been executed. The decree passed by the trial Court was the only decree holding the field. Its execution was rightly sought by the appellant. The executing Court erred in holding that the judgment of the first appellate Court was legal and valid despite the death of both the appellants. The appellant-in-person invited attention to the provisions of Order XXII Rule 2 (2) and Rule 6 of the Code to urge that the order passed by the executing Court was contrary to law. The learned Judge of the High Court committed a similar error while dismissing the writ petition. He placed reliance on the decision in ***P. Chandrasekharan and others vs. S. Kanakarajan and others***[1]***,*** and prayed that the execution proceedings be restored to enable the appellant to execute the decree passed by the trial Court.

9. The legal heirs of the defendant Nos.4 and 5 though served have not chosen to contest the present proceedings. Mr. Sanjeev Kaushik, learned counsel appearing for the respondent No.3 supported the impugned order and submitted that the executing Court rightly declined to execute the decree passed by the trial

[1] *2007 INSC 495*

Court. The said decree having been modified by the first appellate Court, that was the only decree that was liable to be executed. Mr. Shrirang B. Verma, learned counsel appearing for the respondent Nos. 1 and 2 also supported the order passed by the executing Court as upheld by the High Court.

10. Having heard the appellant-in-person as well as the learned counsel for the respondents, we are of the view that the executing Court erred in dismissing the execution petition as not maintainable. The decree passed by the first appellate Court having been passed in an appeal, where both the appellants had expired prior to the appeal being heard, its decree in favour of dead persons was a nullity. The decree passed by the trial Court, therefore, is liable to be executed.

11. It is not in dispute that the suit filed by the predecessors of the appellant was decreed on 14.08.2006. The trial Court declared the original plaintiffs as owners of the suit land that had been allotted to Mr. Arjun Thakre. The plaintiffs were held entitled to receive possession of the said lands. The subsequent allotment of the same land in favour of defendant Nos.3 to 5 was held to be illegal. The defendant No.3 did not choose to challenge this decree. It is only the defendant Nos.4 and 5, who preferred an appeal under Section 96 of the Code. During pendency of that

appeal, the defendant No.4 expired on 27.10.2006, while the defendant No.5 expired on 20.09.2010. The record indicates that the appeal was heard on 28.09.2010. As per the provisions of Order XXII Rule 6 of the Code, if a party expires between the conclusion of hearing and pronouncement of the judgment, the same does not result in abatement of such proceedings and the judgment on being pronounced, would have the same force and effect as if it had been pronounced before the death of such party took place. In view of the fact that the defendant Nos.4 and 5 had died prior to the appeal being heard on 28.09.2010, it is evident that the proceedings in the said appeal are not saved by the provisions of Order XXII Rule 6 of the Code. In effect, the appeal was decided notwithstanding the death of both the appellants, who had preferred the appeal.

12. According to the executing Court, since the appeal was decided on 20.10.2010, which was prior to expiry of a period of ninety days from the death of defendant No.5 on 20.09.2010, the appeal could not have been disposed of as abated. It is correct that the abatement of a proceeding cannot take place prior to expiry of the prescribed period of limitation of ninety days under Article 120 of the Limitation Act, 1963 for bringing on record the legal heirs. Notwithstanding this position, the fact remains that

prior to the appeal being heard and thereafter decided, both the appellants who had filed the said appeal were no more. The judgment pronounced in the first appeal on 20.10.2010 was, thus, in favour of the parties who were no more alive. The said adjudication, therefore, amounted to a nullity and the same did not have the force of law. This position is not in doubt and we may only refer to the decisions in ***Rajendra Prasad and another vs. Khirodhar Mahto and others***[2] and ***Amba Bai and others vs. Gopal and Others***[3] in this regard. The appellant, therefore, is justified in contending that the decree passed by the first appellate Court was a nullity as it was passed in favour of the appealing parties, who had expired prior to the appeal being heard and decided. As a result, the only decree that could be enforced was the one passed by the trial Court on 14.08.2006.

13. In our view, therefore, the appellant is justified in seeking execution of the decree passed by the trial Court on the premise that the decree passed by the first appellate Court was a nullity having been passed in favour of dead persons. We are fortified in this view by the decision *in* ***Bibi Rahmani Khatoon and***

[2] *Civil Appeal No. 2275 of 1994 decided on 11.01.1994*
[3] *2001 INSC 263*

others vs. Harkoo Gope and others,[4] wherein it was held as under:

> "If a party to a proceeding either in the trial Court of any appeal or revision dies and the right to sue survives or a claim has to be answered, the heirs and legal representatives of the deceased party would have to be substituted and failure to do so would result in abatement of proceedings. Now, if the party to a suit dies and the abatement takes place, the suit would abate. If a party to an appeal or revision dies and either the appeal or revision abates, it will have no impact on the judgment, decree or order against which the appeal or revision is preferred. In fact, such judgment, decree or order under appeal or revision would become final."

These observations though made in the context of abatement of proceedings, the same position would arise when the appellant/s expires prior to hearing of the appeal, which is subsequently allowed without the legal heirs being brought on record. In the case in hand, the judgment in favour of the deceased appellants would be a nullity in the absence of the legal heirs being brought on record and the judgment of the trial Court would be the one that would govern the rights of the parties. Hence, the decree passed by the trial Court would revive for being executed.

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[4] *1981 INSC 100*

14. The execution proceedings herein could not have been dismissed on the ground that the decree passed by the trial Court was superseded by the decree passed by the first appellate Court and was modified. Since the decree of the first appellate Court was a nullity, the plaintiffs were entitled to execute the decree passed by the trial Court. It is well settled that if a decree is a nullity, its invalidity can be set up whenever and wherever it is sought to be enforced, even at the stage of execution as held in ***Kiran Singh and others vs. Chaman Paswan and others***[5].

15. We may note that the legal heirs of defendant Nos.4 and 5 who had preferred the first appeal did not take any steps whatsoever to have themselves impleaded before the first appellate Court. Even after the appellant filed the execution proceedings, no steps have been taken by the legal heirs of defendant Nos.4 and 5 to have themselves impleaded. Even before this Court, they have not chosen to contest the proceedings. The contest by respondent No.3, who was the defendant No.3 before the trial Court, would be of no avail as the defendant No.3 did not challenge the decree passed by the trial Court.

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[5] *1954 INSC 45*

16. For all these reasons, we are of the view that the executing Court committed an error in dismissing the execution proceedings that sought to execute the decree passed by the trial Court. The learned Single Judge was also not justified in upholding the order passed by the executing Court. The appellant would be entitled to seek execution of the decree passed in Regular Civil Suit No.181 of 2001.

Accordingly, the order dated 21.06.2023 passed by the executing Court in Regular Darkhast No.22 of 2022 as well as the order passed by the High Court in Writ Petition No.5791 of 2023 on 11.03.2024 are set aside. The execution proceedings are restored for being decided in accordance with law by the executing Court. The civil appeal is allowed in aforesaid terms leaving the parties to bear their own costs.

……..J.
[PAMIDIGHANTAM SRI NARASIMHA]

…..……..J.
[ATUL S. CHANDURKAR]

NEW DELHI,
NOVEMBER 06, 2025.