

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.9292 OF 2022
(Arising out of SLP(C)No.7734 of 2020)

SUMER SINGH GALUNDIA & ANR.

... APPELLANTS

Versus

JEEVAN SINGH (SINCE DECEASED THROUGH LRS)
& ORS.

... RESPONDENTS

O R D E R

1. Leave granted.
2. M/s Kamal Engineering Works was a partnership firm comprising two partners - Shiv Singh Galundia and his son - Sumer Singh Galundia. The firm filed Civil Suit No.73/1996 for specific performance of contract, damages, declaration and for permanent injunction. The Additional District and Sessions Judge No. - 2, Jaipur District, Jaipur dismissed the aforesaid Suit on 07.11.2003.
3. The aggrieved partnership firm filed a First Appeal before the High Court. During the pendency of that appeal, one of the partners, namely, Shiv Singh Galundia died. His legal heirs, which included his wife, two sons and a daughter moved an application under Order XXII, Rule 3 CPC in the pending appeal for their substitution as legal representatives of the deceased partner.
4. The High Court vide the impugned order dated 20.07.2019 has taken the view that with the demise of Shiv Singh Galundia -

one of the two partners, the partnership firm stands dissolved automatically and, thereafter, right to sue does not survive to the other partner for seeking the relief(s) as were prayed for by the partnership firm in the Suit. Consequently, the first appeal itself has been dismissed as abated. The appellants are the two sons of late Shiv Singh Galundia, who being aggrieved by the impugned order, are before us by way of present appeal.

5. Heard learned counsel for the parties and carefully perused the material placed on record.

6. It appears to us that the High Court has completely overlooked Order XXX Rule 4 of the Code of Civil Procedure which reads as follows:

"4. Right of suit on death of partner.-(1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872), where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have-

- (a) to apply to be made a party to the suit, or
- (b) to enforce any claim against the survivor or survivors."

7. Similarly, Order XXII, Rule 10 CPC too has some bearing on the issue as it provides as under:

"10. Procedure in case of assignment before final order in suit.- (1) In other cases of an assignment, creation or devolution of any

interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule(1)."

8. There is no gainsaid that where two persons have sued in the name of a partnership firm and if one of such persons dies during the pendency of the proceedings, it is not necessary to join the legal representatives of the deceased as a party to such proceedings, which shall continue in accordance with law. In other words, the death of one of the partners does not foreclose the continuation of the civil proceedings initiated by the firm. In this view of the matter, the death of Shiv Singh Galundia could not be a valid reason to declare the First Appeal to have abated.

9. Further, the legal representatives of the deceased - Shiv Singh Galundia had already applied for their impleadment in substitution of the deceased and there was no reason for the High Court to decline such a prayer when the application was moved in time without any other legal impediment in accepting their prayer.

10. It also appears to us that the High Court has completely misconstrued the view taken by this Court in AVK Traders vs. Kerala State Civil Supplies Corporation Limited, (2013) 15 SCC 217. This Court in para 12 of the said decision has held as under:

"12. We are in this case faced with a situation of a registered partnership firm, consisting of only two partners, filing a suit when both the partners were alive and during the pendency of the suit, one of the partners died and legal heir of the deceased partner did not show any interest either in the assets of the

firm or in the liabilities and had refused to join as a partner. The question is, on dissolution of the partnership firm on the death of the partner, could the suit already filed be proceeded with by the remaining so-called partner? We notice that the subordinate court has allowed that prayer possibly bearing in mind the principle laid down in Order 22 Rule 10 CPC, which deals with the procedure in case of assignment before the final order of the suit. Rule 10 refers to "devolution of any interest" during the pendency of the suit. In such a case, the court can grant leave to prosecute the suit against the person to or upon whom such interest has been devolved. Admittedly, the partner who died is none other than the father of the appellant and the other sole surviving heir is his sister. The sister is admittedly not interested in joining the firm and, therefore, she is not taking over the assets and liabilities of the firm. Therefore, there has been a complete devolution of interest in favour of the appellant. Under the circumstances, the subordinate court had allowed the amendment and permitted the appellant to proceed with the suit, granting necessary amendment, which, according to the subordinate court, was necessary for a proper and effective adjudication of real dispute between the parties. The High Court, in our view, by taking a hypertechnical approach held that if such a prayer is allowed, the same would alter the nature and character of the suit. In our view, such a stand cannot be countenanced considering the peculiar facts and circumstances of the case."

[emphasis applied]

11. Para 13 of the above-mentioned judgment cannot be said to have held the suit would stand abated in the event of death of one of the partners where the partnership firm comprises two partners. What this Court has observed is that where one of the several partners dies in the suit instituted in the name of the partnership firm "as compared to when one of the two partners of the partnership firm dies", the decree so granted would not be executable even if the partnership firm succeeds in the suit. It does not mean that the suit stands abated.

12. For the reasons aforementioned, the appeal is allowed, the impugned judgment dated 20.07.2019, passed by the High Court, is set aside and S.B.Civil First Appeal No.117/2004 is restored to its original number and file of the High Court. The High Court shall proceed to decide the application dated 20.05.2013, filed by the legal representatives of the deceased - Shiv Singh Galundia under Order XXII, Rule 3 CPC, for their substitution in place of the deceased and after deciding that application, the High Court will take up the appeal on merits.

13. It is clarified that we have not expressed any opinion on the merits of the case.

14. As a result, pending interlocutory application also stands disposed of.

.....J.
(SURYA KANT)

.....J.
(J.K. MAHESHWARI)

NEW DELHI;
DECEMBER 16, 2022.

ITEM NO.35

COURT NO.11

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).7734/2020

(Arising out of impugned final judgment and order dated 20-07-2019 in SBCFA No.117/2004 passed by the High Court of Judicature for Rajasthan at Jaipur)

SUMER SINGH GALUNDIA & ANR.

Petitioner(s)

VERSUS

JEEVAN SINGH (SINCE DECEASED THROUGH LRS) & ORS. Respondent(s)

IA No.39792/2020 - EXEMPTION FROM FILING O.T.

Date : 16-12-2022 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Petitioner(s) Mr. Anuj Bhandari, Adv.
Ms. Anjali Doshi, Adv.
Ms. Disha Bhandari, Adv.
Mr. Gaurav Jain, Adv.
Ms. Kanika Sanwal, Adv.

For Respondent(s) Mr. T. Mahipal, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

As a result, pending interlocutory application also stands disposed of.

(SATISH KUMAR YADAV)
DEPUTY REGISTRAR

(PREETHI T.C.)
COURT MASTER (NSH)

(Signed order is placed on the file)