

Mohammed Ali vs. Ramesh Kumar & Ors.

RSA No. 4241 of 2013

05.06.2026: Present:

Mr Ajay Sharma, Senior Advocate, with Mr Tarun Brakta, Advocate, for the appellant/non-applicant.

Mr Sumit Sharma, Advocate, for the respondent/applicants.

CMP No. 3237 of 2025

The applicants/respondents/plaintiffs have filed the present application under Section 151 of the Code of Civil Procedure (CPC) for the dismissal of the appeal. It has been asserted that the applicants/plaintiffs filed a civil suit for declaration and injunction against defendant Smt. Anita, which was decreed on 31.12.2010. Anita filed the civil appeal in the Court of Learned District Judge, Sirmour. She had already sold her share in favour of Mohmad Ali through registered Sale deed No.77 on 10.02.2011. She had lost the right title and interest in the suit property. The appellant filed an application under Order 1 Rule 10 CPC for his impleadment, which was allowed by the learned District Judge, Sirmour, H.P. However, this application could not have been entertained in an appeal, which was not maintainable. The sale transaction was executed in utter disobedience of the finding of the learned Trial

Court. The impleadment of the appellant in the appeal was of no avail because the appeal was not maintainable. The present appeal is also not maintainable; hence, it has been prayed that the appeal be dismissed.

2. The application is opposed by filing a reply denying the contents of the application. It has been asserted that the *lis* before the court has to be decided considering the facts existing on the date of the filing of the suit. The sale deed was executed after the decree of the suit. The subsequent purchaser would step into the shoes of the original defendant. Therefore, it was prayed that the present application be dismissed.

3. I have heard Mr Sumit Sharma, learned counsel for the applicant and Mr Ajay Sharma, learned Senior Advocate, assisted by Mr Tarun Brakta, learned counsel for the non-applicants.

4. Mr Sumit Sharma, learned counsel for the applicants, submitted that Anita had sold the land on the date of institution of the appeal. She was not competent to file the appeal because she had lost her title. The non-applicant sought the impleadment in the appeal, which was allowed. However, the appeal was not

maintainable, and the order of impleadment will not benefit the non-applicant. The present appeal filed by the non-applicant is also not maintainable. Hence, he prayed that the present application be allowed and the appeal filed by the non-applicant be dismissed as not maintainable.

5. Mr Ajay Sharma, learned Senior Advocate for the non-applicant, submitted that the rights and duties are to be determined as they exist on the date of the institution of the suit. The sale by Anita Devi would not have any effect on the pendency of the litigation; therefore, he prayed that the present application be dismissed. He relied upon the following judgments in support of his submissions: -

- *Rikhu Dev vs Som Dass AIR 1975 SCC 2159;*
- *Dhurandhar Prasad Singh vs. Jai Prakash University (2001) 6 SCC 534;*
- *Jaskirat Datwani vs. Vidyvati & Others (2002) 5 SCC 647; and*
- *Government of Orissa vs. Ashok Transport Agency & others (2005) 1 SCC 536*

6. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

7. It was laid down by the Hon'ble Supreme Court in *Hukum Chandra v. Nemi Chand Jain, (2019) 13*

SCC 363 = 2018 SCC OnLine SC 2812, that rights and liabilities stand crystallised on the date of institution of the suit, but the Court can take note of the subsequent events in appropriate cases. It was observed: -

“15. The rights of the parties stand crystallised on the date of institution of the suit. However, in appropriate cases, the court can take note of all the subsequent events. Observing that the court may permit subsequent events being introduced into the pleadings by way of the amendment as it would be necessary to do so for the performance of determining the rule in controversy for the parties, provided certain conditions are satisfied, in *Om Prakash Gupta v. Ranbir B. Goyal*, 2002 2 SCC 256, it was held as under: -

"11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has the power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In *Pasupuleti Venkateswarlu v. Motor & General Traders*, 1975 1 SCC 770, this Court held that a fact arising after the lis, coming to the notice of the court and

having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court, cannot be blinked at. The court may, in such cases, bend the rules of procedure if no specific provision of law or rule of fair play is violated, for it would promote substantial justice provided that there is an absence of other disentiing factors or just circumstances. The Court speaking through Krishna Iyer, J., affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed."

16. The normal rule is that in any litigation, the rights and obligations of the parties are adjudicated upon as they obtained at the commencement of the litigation. Whenever there are subsequent events of fact or law, which have a material bearing on the rights of the parties to relief or the aspects of moulding appropriate relief to the parties, the court is not precluded from taking cognisance of the subsequent changes of fact and law to mould the relief (vide *Ramesh Kumar v. Kesho Ram*, 1992 Supp2 SCC 623)"

8. Therefore, the very premise of the application that the appeal was not maintainable because Anita Devi had sold the land is without any basis.

9. Order 22 Rule 10 of the CPC deals with the

devolution of the interest during the pendency of the suit and enables the person upon whom the interest has devolved to come on record. Therefore, the normal rule is that the suit is to be continued by a person by whom it was filed or by the person against whom it was filed. The exception is that the transferee can come on record with the leave of the Court. It was laid down by the Patna High Court in *Mahanth Sukhdeo Das v. Kashi Prasad Tiwari*, 1958 SCC OnLine Pat 73: AIR 1958 Pat 630, that the plaintiff can continue with the suit even if the property is transferred. It was observed:

76. Then, there is a further consideration. Even assuming that the contention of Mr Das was correct, the plaintiffs cannot be unsuited in the present appeal. The effect of the operation of the Act is that during the pendency of this litigation, the interest of the plaintiffs devolved upon the State. Notwithstanding this devolution, they will be entitled to continue this litigation. Sub-rule (1) of rule 10 of Order XXII of the CPC provides that in 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. Ordinarily, notwithstanding the devolution of the interest, the suit may be continued by or against the original party.

79. The litigation will continue in his name for the benefit of his successors. Their Lordships further held that no doubt rule 10 gives the Court a discretion in allowing or refusing an application by the successors-in-interest to continue the

litigation, but leave should not be unreasonably refused. In this case, notice of this appeal was served upon the State, and the State has not preferred to appear in this appeal and to be added as a party.

80. The plaintiffs, therefore, can continue this appeal, and the result of this appeal will be binding upon the State. A co-sharer in possession of bakasht lands can at best claim only his share in such lands, and he cannot justifiably maintain that the entire bakasht lands have been statutorily settled with him. Putting the defence at the highest, the plaintiffs' interests have devolved upon the State, and so far as the interest of the defendants is concerned, they have now obtained a statutory settlement of their share in the bakasht lands.

10. A similar view was taken in *Uchhab Patra v. Brundaban Mallik*, 1968 SCC OnLine Ori 144: AIR 1969 Ori 142, wherein it was observed:

Though the aforesaid rule enables the transferee to continue the suit, it is no bar to the transferor continuing the suit for the benefit of his successor. The position of law was settled in *Rai Charan Mandal v. Biswanath Mandal* [A.I.R. 1915 Cal. 103.]. Their Lordships observed that the plaintiff who has instituted a litigation may prosecute it to its conclusion notwithstanding a devolution of his interest in the property. The litigation will continue in his name for the benefit of his successor. Order 22, Rule 10 of the Code of Civil Procedure is an alternative procedure that guards against the danger that the original plaintiff, being no longer interested in the proceedings, may not vigorously prosecute them or may even collude with the adversary. The same view was taken in *Joti Lal Sah v. Sheodhayan Prashad Sah* [A.I.R. 1936 Pat. 420.]

11. Karnataka High Court also took a similar view in *Ambaji Vs. Shoranappa* 1974 STPL 511 Karnataka,

wherein it was observed:

5. Let me recall the effect of an assignment of interest pending suit or appeal. Where, during the pendency of a suit or appeal, the property in suit is transferred or otherwise dealt with by any party to the suit, the transferee is bound by the result of the litigation, whether he is joined as a party or not. The transferee is not under any legal obligation to apply to be added as a party. He may leave the proceedings to be carried on by the transferor, but Order 22, Rule 10 CPC enables him to apply for being added on as a party to continue the suit. In a proper case, the Court may allow such a transferee to be made a party.

12. This Court also recognised this principle in *Shakti Chand vs Chamaru ILR 1974(HP) 1154*, wherein it was observed:

The law does not require that if property is transferred during the pendency of an appeal, and the transferors are already on the record, it is still necessary that the transferee should be brought on the record. A discretion has been vested in the court, and all that is necessary to see is that the discretion is properly exercised. The mere circumstance that the property has been transferred during the pendency of the appeal does not give a right to the transferee to be brought on the record.

13. Thus, the appeal filed by Anita Devi cannot be said to be incompetent on the date of institution of the suit.

14. The judgments in *Rikhu Dev (supra)*, *Dhurandhar Prasad Singh (supra)*, *Jaskirat Datwani (supra)* and *Government of Orissa (supra)* deal with the

scope of Order 22 Rule 10 of the CPC and are not relevant.

15. In view of the above, the present application fails, and it is dismissed.

16. The observations made hereinbefore shall remain confined to the disposal of the present application and will have no bearing whatsoever on the merits of the case.

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List the matter for hearing in due course.

(Rakesh Kainthla)
Judge

05th June, 2026
(ravinder)