

IN THE HIGH COURT OF LAHORE

Decided On: 01.12.1928

Appellants: **Miran Bakhsh**
Vs.

Respondent: **Allah Wasaya and Ors.**

JUDGMENT

John Stone, J.

1. The plaintiff, Miran Bakhsh, sued for a declaration and injunction in respect of certain property, in a suit brought against a large body of defendants. The first Court decreed the claim and the defendants appealed. In the forefront of their appeal they set the contention that the suit had abated and the lower appellate Court accepted the appeal on that ground.

2. What happened in the trial Court was this: (a) Hassan, defendant 46, died, his two legal representatives were already on the record. (b) Nawab Din, defendant 47 died; his brother, Gulab Din (defendant 73) was already on the record; the two sons of Nawab Din were not on the record. (c) Karam Ilahi, defendant 49, died; his son, Imam Din was already on the record.

3. It is common ground that no application was ever made to bring the legal representatives of these three persons on to the record. The learned Counsel for the plaintiff contends, in the first place, that the suit did not abate in toto, and in the second place that the lower appellate Court had no power to declare that the suit had abated.

4. The first authority cited Sundar Pande v. Mt. Kumari [1919] 41 A11. 283, is certainly not in point, for in that case death occurred during the pendency of the appeal, nor does Gopul Das v. Mulchand A.I.R. 1926 Lah. 607, help the plaintiff. Reliance was also placed on a passage at p. 529 of 9 Lah. [Roop Chand v. Sardarkhan A.I.R. 1918 Lah. 359] and the suggestion made was that an appellate Court could not declare that a suit, but

could only declare that the appeal, had abated. The passage certainly does not bear that interpretation. Nor, again, is Sundar Pande v. Mt. Kumari 1919. 41 A11. 283, of any assistance to the plaintiff, for there the decree was made before the death took place.

5. The question of abatement has been exhaustively dealt with in A.I.R. 1928 Lah. 572 and I think that there can be no doubt but that the character of this present suit* is such that if there is an abatement it must be an abatement in toto; and since there was manifestly an abatement of the suit I would hold that the lower Court rightly decided the preliminary objection taken before it and I dismiss this appeal with cost.

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