

1888
DEBI DIN
v.
CHUNNA LAL.

of sixty days as provided by art. 171B is an application which cannot be entertained, because we should then be placing upon the record of an appeal which has abated persons who are the heirs of deceased respondents. I would therefore reject that application (1).

1888
April 30.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Brodhurst, Mr. Justice Tyrrell, and Mr. Justice Mahmood.

RAM SARUP (DEFENDANT) v. RAM SAHAI AND ANOTHER (PLAINTIFFS).*

Act XV of 1877 (Limitation Act), sch. ii., Nos. 171B, 178—Death of plaintiff-respondent—No application for substitution—Application by defendant-appellant for hearing of appeal.

Held by the Full Bench that inasmuch as art. 178 and not art. 171B of the second schedule of the Limitation Act applied to the case of a deceased respondent whether plaintiff or defendant in the suit, an application by a defendant-appellant to have his appeal heard in the absence of any representative of the deceased plaintiff-respondent could not be allowed until the period prescribed by art. 178 had expired without the legal representatives of the deceased applying to be brought on the record in his place.

This was a second appeal which came for hearing before Brodhurst and Mahmood, JJ., who on the 24th March, 1888, passed the following order:—

“In this case Mr. *Kashi Prasad*, on behalf of the appellant, states that one of the plaintiffs-respondents, Ram Sahai, died more than sixty days ago, and that the other plaintiff-respondent, Sadho, is not to be found. Upon this state of things the learned pleader contends that his client, Ram Sarup, being defendant-appellant, was not bound to make any application to implead any person as respondent to the suit as legal representative of the plaintiff-respondent, and that, there being neither any right to apply for such substitution of parties nor any period of limitation applicable thereto, the result would be that the suit will abate, and that the decree of the lower appellate Court should be reversed. The point so raised is very similar to that which has arisen in some other cases, such as *Chajmal Das v. Jyadamba Prasad* (2), which is to be considered, by the order of the learned Chief Justice, by a Bench of three Judges. We think that this case should also be disposed of

* Second Appeal No. 2046 of 1886 from a decree of Rai Mata Din, Officiating Additional Subordinate Judge of Ghazipur, dated the 29th May, 1886, reversing a decree of Syed Zain-ul-abdin, Munsif of Korantadih, dated the 5th December, 1885.

(1) See Act VII. of 1888, s. 66 (4).

(2) *Ante* p. 260.

by the same Bench, and with this recommendation we direct it to be laid before the learned Chief Justice for orders.”

1888

RAM SARUP

v.

RAM SAHAI.

The case was ultimately referred to the Full Bench by an order dated the 28th April, 1888.

Munshi *Kashi Prasad* and Lala *Juala Prasad*, for the appellant.

Pandit *Bishambhar Nath*, for the respondent.

EDGE, C. J.—In this case one of the two plaintiffs-respondents died pending the appeal. Three years have not expired since the day of his death. The defendant-appellant applies to have his appeal heard in the absence of any representative of the deceased plaintiff-respondent. For the reasons stated by the majority of this Court in *Muhammad Husain v. Khushalo* (1), I am of opinion that we should not accede to this request until we have the proper parties on the record. We have held that art. 178 and not art. 171B applies to the case of a deceased respondent, be he plaintiff or defendant in the suit. In my opinion the motion should be refused.

STRAIGHT, J.—I am of opinion that the contention of Mr. *Kashi Prasad*, which has been referred to this Full Bench by the Divisional Bench for disposal, should be decided against him, and that he should not be allowed to proceed with the trial of this appeal, and to have it decreed as against the respondent who has died since the institution of the appeal, until the period of limitation provided for in art. 178 of the Limitation Law has expired and the legal representatives or heirs of such deceased respondent have failed to make such application to be brought on the record. That contention of the learned pleader for the appellant in the appeal must be taken to be disposed of, and the case will come on in due course.

BRODHURST, J.—I concur with the learned Chief Justice and my brother Straight.

TYRRELL, J.—I concur.

MAHMOOD, J.—Feeling myself bound by the opinion of the majority, I must bow to the conclusion at which they have arrived. I concur in the order which they have made (2).

(1) *Ante*, p. 223. (2) See Act VII of 1888, s. 66 (4).