

APPELLATE CIVIL

Before Justice Sir Lal Gopal Mukerji and
Mr. Justice Young

1933
April, 19

RAM GHULAM AND ANOTHER (PLAINTIFFS) v. SHYAM
SARUP AND OTHERS (DEFENDANTS)*

*Civil Procedure Code, section 92—Suit relating to public trust
—Death of one of the two plaintiffs appellants pending
appeal—No abatement of appeal.*

The death, during the pendency of an appeal, of one of the two plaintiffs appellants who instituted a suit under the provisions of section 92 of the Civil Procedure Code does not affect the maintainability of the appeal, although no person is brought on the record in place of the deceased plaintiff appellant.

Where the suit has been properly instituted according to section 92 of the Civil Procedure Code, there is nothing in that section which says that the suit cannot be continued if one of the original plaintiffs who instituted the suit in the manner laid down by law happens to die. *Raja Anand Rao v. Ramdas Daduram* (1), relied on; *Chhabile Ram v. Durga Prasad* (2), dissented from.

Mr. B. E. O'Connor, Dr. S. N. Sen and Messrs. G. Agarwala and Kishun Lal, for the appellants.

Messrs. S. C. Das, Hazari Lal Kapoor, S. B. Johari, G. S. Pathak, P. M. L. Verma and U. S. Gupta, for the respondents.

MUKERJI and YOUNG, JJ. :—This appeal arises out of a suit instituted under section 92 of the Code of Civil Procedure by two individuals, one of whom has died since the institution of this appeal. A preliminary objection has been taken by the respondents that the appeal should fail because one of the two original appellants is dead, and section 92 of the Code of Civil Procedure lays down that at least two persons shall institute the suit under that section. We have heard the learned counsel for the respondents at length on this point, but we are of opinion that on a simple reading of section 92 of the Code of Civil Procedure the

*First Appeal No. 110 of 1930, from a decree of P. C. Plowden, District Judge of Bareilly, dated the 23rd of December, 1929.

(1) (1920) I. L. R., 43 Cal., 493. (2) (1915) I. L. R., 37 All., 296.

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hearing of this appeal cannot be barred. All that the section says is "Two or more persons . . . may institute a suit." Where the suit has been properly instituted according to section 92 of the Code of Civil Procedure, there is nothing in that section which says that the suit cannot be continued if one of the original plaintiffs who instituted the suit in the manner laid down by law happens to die. Although this is our plain reading of the section, it appears that there is a conflict of opinion on this point. It would serve no useful purpose to quote the different cases cited to us. In our High Court in *Chhabile Ram v. Durga Prasad* (1) two learned Judges held that if one of the plaintiffs in a suit instituted under section 92 of the Code of Civil Procedure dies, the suit would abate. It was, however, remarked that it would be open to any other member of the public interested in the subject matter to obtain the consent of the Advocate-General and to apply to be brought on the record as a co-plaintiff.

The conflict among the High Courts is, however, set at rest by a decision of their Lordships of the Privy Council in *Raja Anand Rao v. Ramdas Daduram* (2). It was argued before their Lordships that because one of the plaintiffs had died the suit was not maintainable. The argument, however, was not accepted. Their Lordships at the bottom of page 497 are reported to have remarked as follows: "There was also a point that one of the persons who originally raised the suit and got the sanction having died, the suit could not go on; but there does not seem any force in that point either, it being a suit which is not prosecuted by individuals for their own interests, but as representatives of the general public." After this pronouncement on the part of their Lordships, we must hold and do hold that the law laid down in *Chhabile Ram v. Durga Prasad* (1) is no longer good law.

[The judgment then proceeded to decide the appeal on the merits.]

(1) (1915) I.L.R., 37 All., 236.

(2) (1920) I.L.R., 48 Cal., 493.