

within the meaning of the portions of the Civil Procedure Code above referred to, and therefore no appeal lies.

We therefore dismiss the appeal, but as we consider that the plaintiffs were to blame for not moving the Court to draw up a formal decree, we leave the parties to bear their own costs in this Court. Pandit Sheo Narain says that he will advise his clients to move the Lower Court now to draw up a proper decree.

*Appeal dismissed.*

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### APPEAL FROM ORIGINAL CIVIL.

*Before Mr. Justice Broadway and Mr. Justice Bevan-Petman.*

SARDARI LAL, ETC. (DEFENDANTS)—*Appellants,*

*versus*

RAM LAL, ETC. (PLAINTIFFS)—*Respondents.*

Civil Appeal No. 2523 of 1915.

*Abatement of appeal in toto where one of the respondents in whose favour a decree was passed jointly with others had died and her legal representatives had not been brought on the record—Civil Procedure Code, Act V of 1908, order 22 rule 4.*

In the present case the three plaintiffs claimed to be the heirs and in possession of the property of one D. M. who was the original mortgagee. The plaintiffs claimed jointly a sum of Rs. 7,284 as due under the mortgage. The defendant admitted that plaintiffs were the heirs of the mortgagor. The Lower Court passed a joint decree in favour of the plaintiffs for Rs. 6,670. Against this decree the defendant preferred this appeal on 1st October 1915. It was admitted that *Mussamat H.*, one of the three plaintiff-respondents, died in 1915 and that appellant knew of it but took no steps to bring her legal representatives, *i.e.*, her daughters, on the record.

1919

GELA RAM

*v.*

GANGA RAM.

1919

Oct. 29.

1919

SARDARI LAL

v.  
RAM LAL.

Held that the decree being a joint one, the appeal, having abated against *Mussammât H.*, abates in its entirety, *vide* order 22 rule 4 of the Code of Civil Procedure.

*Bejoy Gopal v. Umesh Chandra Bose* (1), *Tarip Dafadar v. Khotejannessa Bibi* (2), *Dhananjit Narain v. Singh Chandeshwar Prasad* (3), *Raj Chunder Sen v. Ganga Das* (4), *Rao Ghulam Muhammad Khan v. Nahar Ali* (5), *Khuda Baksh v. Mathra Das* (6), *Hadu v. Lala* (7), and *Jamna v. Sarjit* (8), followed.

*First appeal from the decree of Lala Mul Chand, Sahgal, Senior Subordinate Judge, Ferozepore, dated the 17th June 1915.*

HARBHAJAN DAS, for Appellants.

RAM CHAND MANCHANDA, for Respondents.

The judgment of the Court was delivered by—

BROADWAY, J.—A preliminary objection has been taken to the hearing of this appeal, *viz.*, that one of the plaintiff-respondents *Mussammât Hardevi* died some four years ago and her heirs or legal representatives have not been brought on to this record. The suit was originally filed by *Babu Ram Lal, Lala Sham Lal* and *Mussammât Hardevi*, the latter being the mother of the two former. The plaintiffs jointly claimed a sum of Rs. 7,284 as due under a mortgage from the defendant-appellant, and in paragraph 7 of the plaint it was specifically alleged that the plaintiffs were the heirs and in possession of the property of *Babu Dhari Mal* who was the original mortgagee. In paragraph 8 of the written statement filed by the defendant-appellant paragraph 7 of the plaint was specifically admitted as being correct. The learned Subordinate Judge on the 17th June 1915 granted plaintiffs a joint decree for Rs. 6,670 with costs realizable by sale of the mortgaged property.

Against this decree the defendant-appellant preferred this appeal on the 1st October 1915. Counsel for the appellant admits that *Mussammât Hardevi* died in 1915 and that this fact was known to his client. In spite of this, however, no steps were taken to bring her legal representatives on to the record and it is

(1) (1901) 6 Cal. W. N. 196.  
(2) (1906) 10 Cal. W. N. 981.  
(3) (1907) 11 Cal. W. N. 504.  
(4) (1904) 1. L. R. 31 Cal. 487 (P. C.)

(5) 53 P. R. 1896.  
(6) 62 P. R. 1913.  
(7) 41 P. R. 1915.  
(8) 67 P. R. 1919.

1919

SARDARI LAL  
v.  
RAM LAL.

stated and admitted that her heirs are her daughters and not the other respondents, her sons. Under Order XXII, rule 4, Civil Procedure Code, the appeal abates entirely unless the right to appeal survives so far as the present respondents are concerned. In *Bejoy Gopal v. Umesh Chandra* (1) it was held that where the decree was a joint decree in favour of all the plaintiffs, if the defendant desires to question the correctness of that decree he would be bound to bring before the Court all the parties affected by that decree. This was followed in *Tarip Dafa-dar v. Khotejannessa Bibi* (2) where it was held that when during the pendency of an appeal against a decree for rent one of the plaintiff-respondents died and his heirs were not brought on to the record the appeal should be dismissed in its entirety. In *Dharanjit Narain v. Singh Chandeshwar Prasad* (3), it was held that during the pendency of an appeal against a decree setting aside a sale of the joint estate for arrears of revenue one of the plaintiff-respondents died and no application was made for substitution of the heirs of the said deceased respondent, the appeal should abate as the decree could not be reversed without the representatives of the deceased being placed on the record and that under no circumstance could the decree be confirmed as to the unascertained shares of the joint share-holders and reversed as to the unascertained shares of the other joint share-holders. In *Raj Chunder Sen v. Ganga Das* (4), their Lordships of the Privy Council held that when the nature of a suit was such that the cause of action did not survive against the remaining respondents alone on the death of one of the respondents, the entire appeal abated. To the same effect was the decision in *Rao Ghulam Muhammad Khan v. Nahar Ali* (5). In *Khuda Bakhsh v. Mathra Das* (6) A. sold certain land to B. B. resold it to seven persons by one sale deed in which the area each vendee was to take was specified but not the proportion in which the vendees were to pay the sale money. Plaintiff, the son of A, sued for possession on A's death, alleging that the sale was not binding on him. The trial

(1) (1901) 6 Cal. W. N. 195.

(2) (1906) 10 Cal. W. N. 931.

(3) (1907) 11 Cal. W. N. 504.

(4) (1904) I. L. R. 31 Cal. 487 (P. C.).

(5) 53 P. R. 1296.

(6) 62 P. R. 1913.

1919

SARDARI LAL  
v.  
RAM LAL.

Court decreed his claim, but on appeal this decision was reversed. Plaintiff thereupon appealed to the Chief Court. While the appeal was pending one of the vendees-respondents died, and as no application was made to bring his representatives on to the record the appeal abated against him. It was also held that inasmuch as the land was still joint in the hands of the vendees, the appeal having abated against one of them, could not proceed against any of the respondents and must be dismissed. A similar decision was arrived at in *Hadu v. Lala* (1) and *Janna v. Sarjit* (2).

In our opinion there can be no doubt that this appeal must be dismissed as against all the respondents. That it has now abated against *Mussammat Hardevi* is clear. The decree was a joint one, and so far as she is concerned cannot now be in any way interfered with. Following the decisions cited above we consider that the decree being joint the appeal abates in its entirety and we accordingly dismiss it with costs.

*Appeal dismissed.*

1) 41 P. R. 1915.

2) 67 P. R. 1919.