

Dhanna missioner acted outside the scope of their respective
v. jurisdiction
Siri Parkash and For reason stated above, I am not satisfied that
others petition under Article 227 is competent. I would
Tek Chand, J. therefore, dismiss the petition, but in the circum-
 stances leave the parties to bear their own costs.

R.S.

APPELLATE CIVIL

Before Daya Krishan Mahajan and Prem Chand Pandit, JJ.

PUNJAB STATE,—Appellant

versus

ATMA SINGH,—Respondent.

Regular First Appeal No. 272 of 1957.

1962
 May, 24th, *Code of Civil Procedure (Act V of 1908)—Order 22*
Rule 3—Two appeals out of same suit—One by plaintiff
and the other by defendant—Defendant's appeal abating
for failure to bring legal representatives of the respondent
on record within time—In plaintiff's appeal legal repre-
sentatives of the appellant brought on record within time—
Abatement of defendant's appeal—Whether can be set aside.

Held, that where two appeals are independently filed and arise out of the same suit and where one is filed by the plaintiff in the original suit and the other by the defendant and where the appeal by the defendant-appellant has abated as he has not added the legal representatives of the deceased respondent in time, the defendant-appellant cannot claim the benefit of the fact that the legal representatives of the deceased appellant in the appeal filed by the plaintiff-appellant had been added within time and, therefore, say that it should be taken that those legal representatives have also been added in place of the deceased respondent in his appeal. The analogy of an appeal and memorandum of cross-objections in the same appeal does not hold good in the present case and hence the abatement cannot be set aside.

Regular First Appeal from the order of Shri Murari Lal Puri, District Judge, Patiala, dated the 16th July, 1957,

awarding the petitioner compensation at the rate of Rs. 3 per square yard for *Khasra* Nos. 27, 28 and 29 and at Rs. 3-4-0 per square yard for *Khasra* No. 549/5 and further ordering that the petitioner will also get a sum of 15 per cent on the market value on account of the compulsory nature of acquisition of his land besides 6 per cent per annum on the excess amount allowed.

S. M. SIKRI, ADVOCATE-GENERAL. WITH H. L. SARIN, ADVOCATE, for the Appellant.

ATMA RAM, WITH R. S. MARYA, ADVOCATE,, for the Respondent.

JUDGMENT

PANDIT, J.— This is an appeal filed by the State against the award given by the learned District Judge, Patiala, on a reference under section 18 of the Land Acquisition Act made by the Collector at the instance of Atma Singh, whose land measuring 43 *bighas* 11½ *biswas* comprised in *khasra* Nos. 27, 28, 29 and 549/5 in village Lehal had been acquired by the Pepsu Government for construction of a Multi-purpose Higher Secondary School. Compensation at the rate of Rs. 2 per square yard had been awarded by the Collector and the learned District Judge had enhanced it to Rs. 3 per square yard for *khasra* Nos. 27, 28 and 29 and Rs. 3-4-0 per square yard for *khasra* Nos. 549/5. Atma Singh was claiming Rs. 4-8-0 per square yard for *khasra* Nos. 27, 28 and 29 and Rs. 5 per square yard for *khasra* No. 549/5.

Pandit, J.

The State in this appeal claimed that the compensation allowed by the learned District Judge should be reduced to Rs. 2 per square yard for the entire land, as given by the Collector, while Atma Singh in his cross-appeal (Regular First Appeal No. 280 of 1957) has claimed Rs. 4 per square yard for *khasra* Nos. 27, 28 and 29 Rs. 4-6-0 per square yard for *khasra* No. 549/5.

A preliminary objection has been raised by the learned counsel for the respondent that this appeal has abated, because the respondent, Atma Singh, died on

Punjab State 8th February, 1959 and no application for bringing
 v. his legal representative on the record has been filed
 Atma Singh up till today. Learned counsel for the State submitted
 Pandit, J. that since the legal representative of Atma Singh had
 been brought on the record in the cross-appeal filed
 by him (Regular First Appeal No. 280 of 1957), this
 appeal could not abate. For this he placed his re-
 liance on a Privy Council decision in *Brij Inder Singh*
v. Kanshi Ram (1), wherein it was held—

“The introduction of a plaintiff or a defendant
 for one stage of a suit is an introduction for
 all stages, even if it be made on an appeal
 from a mere interlocutory order.”

This decision was considered in *Shankaranaraina*
Saralaya v. Laxmi Hengsu and others (2), where the
 learned Judge observed as under:—

“There remains the decision of the Privy Coun-
 cil reported in *Brij Inder Singh v. Kanshi*
Ram (1). In that case, when an order on
 an interlocutory application passed during
 the course of a suit was made the subject of
 an appeal or revision in the appellate Court
 and when the legal representative of the
 original plaintiff was brought on record in
 the appellate Court as the death of the
 plaintiff occurred during the pendency of
 the matter before the appellate Court, it
 was held that when the suit had to be tried
 again by the first Court after the disposal
 of that appeal, no fresh application to bring
 in the legal representatives of the deceased
 plaintiff was necessary. Their Lordships
 have held that the introduction of a plain-
 tiff or a defendant for one stage of a suit is
 an introduction for all stages. When the
 subject-matter of the interlocutory appli-
 cation was pending in the appellate Court,
 it was deemed to be one stage of the suit
 and, therefore, there was no need to put in
 a fresh application at a further stage of the
 suit when it came on for trial before the
 first Court. Can it be said in the present

(1) I.L.R. 45 Cal. 94.

(2) A.I.R. 1931 Mad. 277.

case that what was done in one appeal could enure for the benefit of another appeal unless the latter appeal can be deemed to be a continuation or a further stage of the appeal in which the legal representatives were brought on record? I am constrained to say that it is difficult to extend the principle of the decision of the Privy Council to the facts of this case.”

Punjab State

v.

Atma Singh

Pandit, J.

After discussing the various authorities, the learned Judge came to the conclusion that—

“Where two appeals are independently filed and arise out of the same suit and where one is filed by the plaintiff in the original suit and the other by the defendant and where the appeal by the defendant-appellant has abated as he has not added the legal representative of the deceased respondent in time, the defendant-appellant cannot claim the benefit of the fact that the legal representative of the deceased appellant in the appeal filed by the plaintiff-appellant has been added within time and, therefore, say that it should be taken that those legal representatives have also been added in place of the deceased respondent in his appeal. The analogy of an appeal and memorandum of cross-objections in the same appeal does not hold good in the present case and hence the abatement cannot be set aside.”

This appeal, consequently, abates and is dismissed. There will, however, be no order as to costs.

D. K. Mahajan, J.—I agree.

B. R. T.

CIVIL MISCELLANEOUS

Before S. S. Dulat and Prem Chand Pandit, JJ.

GURU AMARJIT SINGH,—*Petitioner*

versus

PUNJAB STATE AND ANOTHER,—*Respondents*

Civil Writ No. 690 of 1961.

*Punjab Security of Land Tenures Act (X of 1953)—
Section 12(1)—“Customary rent”—Meaning of—Cash rent May.*

1962

25th.