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HIGH COURT OF CHHATTISGARH AT BILASPUR

MCC No. 209 of 2016

- 1** - Mohan Sai S/o Son Sai Mahara, Aged About 47 Years R/o Village- Dongaghat, Asna, Tehsil- Jagdalpur, District- Baster, Chhattisgarh, Chhattisgarh
- 2** - Trinath S/o Son Sai Mahara, Aged About 45 Years R/o Village- Dongaghat, Asna, Tehsil- Jagdalpur, District- Baster, Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh
- 3** - Shrimati Chairo Died And Deleted, Chhattisgarh
- 4** - Ramnath Pandey Died And Deleted, Chhattisgarh
- 5** - Sonai D/o Madhu Mahara Died On 24.01.2007 Defendants, Chhattisgarh

... Petitioner(s)

versus

- 1** - Shrimati Satyavati D/o Loku, Aged About 53 Years R/o Village- Dongaghat, Asna, Tehsil- Jagdalpur, District- Baster, Chhattisgarh, Chhattisgarh
- 2** - Shrimati Sukhari Died And Deleted, Chhattisgarh
- 3** - State Of Chhattisgarh, Through Collector/ Tehsildar, Baster, District- Baster, Jagdalpur, Chhattisgarh Plaintiffs, District : Bastar(Jagdalpur), Chhattisgarh

... Respondent(s)

For Petitioner(s)	: Mr. Shobhit Koshta, Advocate
For Respondent Nos. 1 & 2	: None
For State /Respondent No. 3	: Mr. Anand Gupta, Dy. GA

Hon’ble Shri Justice Sachin Singh Rajput

Order on Board

26/09/2026

This MCC has been filed under Order XXII Rule 4 read with Rule 11 of the Code of Civil Procedure, 1908, being aggrieved by the judgment and decree dated 20.08.2014 passed by this Court in Second Appeal No. 1065 of 2000.

2. The facts necessary for disposal of the present case are that Smt. Sukari and Smt. Satyawati, as plaintiffs, filed a suit before the learned Civil Judge, Class-II, Jagdalpur against the defendants, namely, Chairu Mohan Sai, Trinath, Ramnath Pandey, Sonai and the State of Madhya Pradesh, which was registered as Civil Suit No. 121-A of 1993. The suit was filed seeking partition of the joint family property comprised in piece of Khasra Nos. 447, 609 and 473/1(Gha) situated at Village Mahra, Tahsil Jagdalpur, District Bastar, C.G., admeasuring a total area of 12.84 acres. The learned Civil Judge decreed the suit and passed a decree for partition of half share in the suit property in favour of the plaintiffs as well as defendant Nos. 1 to 5. Aggrieved by the said judgment and decree, defendant Nos. 1 to 5 preferred a first appeal under Section 96 of the Code of Civil Procedure, 1908, before the learned Third Additional District Judge, Bastar, Place Jagdalpur, which was registered as Civil Appeal No. 14-A of 1999. The said appeal was allowed vide judgment dated 03.08.2000 and the judgment and decree passed by the learned Civil Judge was set aside. Assailing the said judgment, the plaintiffs preferred Second Appeal No. 1065 of 2000 before this Court. During the pendency of the second appeal, plaintiff No. 1, Smt. Sukari, passed away and her name was deleted from the cause title. Consequently, the appeal was contested by plaintiff No. 2, Smt. Satyawati. The appeal was initially preferred against the original defendants. During its pendency, original defendant No. 1, Smt. Chairu and defendant No. 4, Ramnath Pandey also passed away and their names were deleted from the cause title. This Court, vide judgment and decree dated 20.08.2014, allowed the second appeal and set aside the judgment and decree passed by the learned First Appellate Court, while affirming the judgment and decree passed by the learned Civil Judge. Thus, the decree for partition of half share in the suit property in favour of the plaintiff(s) and against the defendant(s) stood affirmed.

3. Learned counsel for the petitioner submits that prior to the passing of the impugned judgment and decree by this Court, defendant No. 5 – Sonai had already passed away. Therefore, the appeal had abated against the deceased - defendant No. 5, and the judgment and decree came to be passed by this Court without bringing her legal representatives on record. He further submits that the present MCC has been filed by defendant Nos. 2 and 3 seeking recall of the order dated 20.08.2014 passed by this Court. In support of his submission, he places reliance upon the judgment of the Hon'ble Supreme Court in ***Gurnam Singh (Dead) Through Legal Representatives and Others v. Gurbachan Kaur (Dead) by Legal Representatives***, reported in **(2017) 13 SCC 414**.

4. None for the private respondent(s).

5. Mr. Gupta, learned counsel for the State, submits that the State is a formal party.

6. Heard counsel for the parties and perused the records.

7. The judgment and decree passed by the learned Civil Judge was affirmed by this Court. Though defendant No. 5 – Sonai had died, the legal representatives was not brought on record. However, in a suit for partition the appeal as a whole does not abate merely on account of the death of one of the parties. The legal position in this regard is settled by the judgment of the Hon'ble Supreme Court in ***Morasa Anjalah Vs. Kondragunte Venkateswarlu (Died) and Others***, reported in **1992 SCC OnLine AP 20**, in paragraph No. 26 has held under:-

26. From the above discussion, the following principles can be deduced:-

1) Where any of the parties to a suit appeal dies during the pendency of the suit appeal, steps to bring his legal representatives on record have to be taken in terms of the provisions of [Order 22 of the Code of Civil Procedure](#).

2) Where no steps are taken to bring the legal

representatives on record under Rule 3 or 4 of Order 2 and the suit/ appeal has abated and/ or where the attempt to have the order of abatement set aside and bring the legal representatives of the deceased party on record failed, the defaulting party has to take the consequences mentioned in Rule 9 of Order 22 and he cannot be allowed to have recourse to the general provisions of Order 1, Rule 10, [C.P.C.](#) for impleading the legal representatives of the deceased party by circumventing the provisions of the said Order 22.

3) An application under Order 1, Rule 10, [C.P.C.](#) to implead a necessary party (including a legal representative of a deceased party to the suit/ appeal which has abated due to not bringing on record the legal representatives of the deceased party) can be filed in a suit appeal to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, provided the proposed party has an independent right or obligation dehors his position as legal representative of the deceased defendant.

4) An administration/partition suit does not abate as a whole due to not bringing on record the legal representative of a deceased party (co-sharer/ co-owner) as each party is in the position of the plaintiff and the heirs of the deceased co-sharer -- co-owner is a necessary party to the suit, he can come on record on his application under Order 1, Rule 10, C.P.C.

8. In view of the foregoing, this MCC at the behest of applicants does not survive for further adjudication and is accordingly dismissed. Any interim order, if subsisting, stands vacated.

Sd/-
(Sachin Singh Rajput)
JUDGE