

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.611 of 1985

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Sudama Rai & Ors

.... Appellant/s

Versus

Bhagrashan Rai & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binay Kant Mani Tripathy
Mr. Mani Tripathy
Mr. Keshav Nath Tiwary

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

19 15-05-2015

Heard learned counsel Mr. Sri Nandan Prasad Singh

appearing on behalf of the appellants and learned counsel
Mr. Ratan Kumar Sinha appearing on behalf of the legal
representatives of the deceased respondent no.1 on the
Interlocutory Application No.1188 of 2014.

2. This interlocutory application has been filed by the
appellants for substituting the legal representatives of the deceased
respondent nos.1, 2, 9, 10, 11 and 14.

3. At the time of hearing of this application the learned
counsel Mr. Sri Nandan Prasad Singh for the appellants submitted
that respondent nos.2, 9, 10, 11 and 14 neither appeared nor filed
written statement in the court below, therefore, although he has
filed the application for substitution, the appellants may be

exempted from substituting the legal representatives of the deceased respondent nos.2, 9, 10, 11 and 14 in view of the provision as contained in Order 22 Rule 4 (4) of the Code of Civil Procedure.

4. The learned counsel for the respondent no.1 series has got no objection.

5. Accordingly, so far the substitution of the legal representatives of the deceased respondent nos.2, 9, 10, 11 and 14 are concerned, the appellants are exempted from substituting their legal representatives.

6. So far the substitution of the legal representatives of the deceased respondent no.1 is concerned, the learned counsel for the appellants submitted that the appellant no.1, who is aged about more than 80 years is the pairvikar of the case and was not aware of the legal procedure, therefore, there is delay in filing a substitution application. A separate limitation application has been filed for condoning the delay i.e. I.A. No.1189 of 2014. According to the learned counsel, one of the legal representatives of the deceased respondent no.1 filed application for passing an order to the effect that the appeal has abated and, therefore, the appellant no.4 came to Patna and the learned counsel advised him to file substitution application and then the appellant no.4 went back to



collect the names and date of death and address of the heirs of deceased respondent and thereafter the appellant no.6 came back to Patna on 09.02.2014 and the instant substitution application has been filed. On these grounds the learned counsel submitted that the appellants were prevented by sufficient cause. The learned counsel further submitted that the view of the Hon'ble Supreme Court is that instead of deciding/dismissing the appeal on technical ground or on the ground of limitation the appeal should be heard on merit and moreover when the appellants have no knowledge about the procedure, the Hon'ble Supreme Court in many decisions has held that the delay normally should be condoned.

7. On the other hand, learned counsel appearing on behalf of the legal representatives of the deceased respondent no.1 relied upon a decision of the Supreme Court, **A.I.R. 2009 SC 2907 (Katari Suryanarayana and Ors. v. Koppiseti Subba Rao and Ors.)** and submitted that in fact the false affidavit has been sworn by the appellant no.6 and false statements have been made to the effect that the appellant no.1 is the pairvikar of the appeal. The learned counsel submitted that appellant no.6 is practicing advocate in Civil Court, Motihari, who has sworn the affidavit. Had the appellant no.1 been the pairvikar, he should have sworn the affidavit. Moreover, it is not expected that an old person, who

is aged about more than 80 years, can be said to be the pairvikar in view of the fact that he has got other more than three sons, who all are already on record of this appeal. Therefore, according to the learned counsel, this statement has been made only with a view to suit the case of the appellants. On this ground, the learned counsel submitted that the application for condoning the delay and substitution application be dismissed.

8. Perused the judgment relied upon by learned counsel for the respondent.

9. It appears that in that case before the Hon'ble Supreme Court the delay was 2381 days and 2601 days. In the present case admittedly respondent no.1 died in the year 1989 and this substitution application has been filed in the year 2014. It is admitted fact that the appellants and the deceased respondent no.1 were very close relatives and the suit arises out of partition suit. It is also not the case of the appellants that the appellants were not knowing the death of respondent no.1. The fact that the appellant no.6 is practicing advocate is not denied. The appellant no.1 has not sworn any affidavit either in the limitation application or in the present substitution application. Admittedly the appellant no.1 has the sons, who are already on record as appellant nos.3, 4 and 6. The Hon'ble Supreme Court in the aforesaid case has held that the



dates of death of plaintiffs-respondents were known to the defendants-appellants and it is difficult to conceive that they were not in touch with their advocates from 1999 to December, 2006. If not every week, they were expected to contact their lawyers once in a year. Ignorance of legal consequences without something more would be not sufficient to condone such a huge delay. In that case Supreme Court has refused to interfere with the order passed by the High Court whereby the appeal was abated. The Hon'ble Supreme Court in the case of **Esha Bhattacharjee vs. Managing Committee of Reghunathpur Nafar Academy and Ors, 2014 (1) P.L.J.R. (SC) 290** has held that if the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation. Entire gamuts of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

10. As stated in this present case the explanation has been given by the appellants that appellant no.1 is the pairvikar who is aged about more than 80 years. This submission or statement in the application appears to be only fanciful and has been made with a view to gain sympathy from the Court as the

sons of appellant no.1 are on record and one of the sons is practicing advocate. Therefore, it is also not acceptable and reliable that the advocate will not know the procedural law.

11. The Hon'ble Supreme Court in the case of **Pundlik Jalam Patil Vs. Executive Engineer Jalgaon Medium Project and another, (2008) 17 Supreme Court Cases 448** has held that in correct statements made in application seeking condonation of delay itself is sufficient to reject application without any further enquiry as to whether the averment made in the application reveals sufficient cause to condone the delay. In the present case at our hand admittedly the statements/submissions made in the substitution application are wrong or incorrect and it is not reliable at all.

12. Therefore, in view of the above aforesaid settled principles of law and considering the conduct of the appellants, I do not find any ground to condone the delay of about 26 years what to speak sufficient ground and, therefore, the limitation application filed for condoning the delay in filing the substitution application is hereby rejected and accordingly, the substitution application is also dismissed.

13. The appeal has abated against the deceased respondent no.1.

14. Since this appeal was filed against the impugned judgment and decree whereby the plaintiff-respondent no.1's suit for partition was decreed, now in absence of the contesting respondents representing the estate of the deceased respondent no.1 and in view of the fact that the substitution application has already been dismissed, the impugned judgment and decree now cannot be either interfered with, modified, altered or set aside. Therefore, this whole appeal has become now incompetent. Accordingly, it is dismissed.

Harish/-

(Mungeshwar Sahoo, J)

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