

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 33 of 2013

1. Ajay Shukla S/o Sudama Prasad Shukla Aged About 39 years R/o Green Park Colony, Bilaspur, Tha. & Distt. Bilaspur C.G.

---- Appellant

Versus

1. Manharan Lal Suryavanshi, S/o Itwari Ram Suryavanshi Aged About 49 Years (Now Deceased), R/O village Pond, P.S. Chakarbhata, Tah. Takhatpur, Distt. Bilaspur C.G.
- 1A. Ashwani Suryavanshi S/o Manharan Lal Suryavanshi Aged About 28 Years R/O Hatri Chowk, Yadunandan Nagar Road, Tifra, P.S. Civil Lines, Tah. & Distt. Bilaspur C.G.
- 1B. Arvind Suryavanshi S/o Manharan Lal Suryavanshi Aged About 19 Years R/O Hatri Chowk, Yadunandan Nagar Road, Tifra, P.S. Civil Lines, Tah. & Distt. Bilaspur C.G.
2. Smt. Sharda Devi Agrawal W/o Pawan Agrawal Aged About 54 Years R/O Jabbal Gali, Ward No. 3, Nehru Nagar, P.S. Civil Lines, Tah. & Distt. Bilaspur C.G.
3. State of Chhattisgarh Thru- Collector, Bilaspur C.G.

---- Respondents

For Appellant	:	Mr. Vimlesh Bajpai, Advocate
For Respondent No1A 1B & 2	:	Mr. Anil S. Pandey, Advocate
For Respondent No.3	:	Mr. Roshan Dubey, P.L.

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Order On Board by T.P.Sharma, J.

07/04/2015

By this appeal, the appellant/plaintiff has challenged the legality, validity and propriety of the order dated 07.11.2012 passed by the 2nd Additional District Judge, Bilaspur, in Civil Suit No.07A/2011 whereby the trial Court has dismissed the suit as time barred.

2. In the present appeal, appellant has impleaded Legal Representatives of respondent No.1 on the ground that respondent No.1 has died during pendency of the appeal and the Court below has ordered for impleading legal representatives of deceased – Manharan Lal Suryavanshi, but, the appellant has failed to implead them before the trial Court.

3. The aforesaid circumstance clearly reveals that order, which is of nullity, passed was against the dead person. The trial Court ought to have granted one more opportunity to the appellant to implead the legal representatives of deceased defendant No.1 and without providing such opportunity to the appellant, the order passed against the dead person is not sustainable.

4. Consequently, the appeal deserves to be and is hereby allowed on the technical ground of the fact that the order passed by the trial Court was against the dead person. Case is remitted back to the trial Court for providing an opportunity to the appellant for impleadment of legal representatives of deceased respondent No.1 and after providing such opportunity to pass a fresh order. However, it is made clear that we have not considered the case on merits, especially, relating to limitation, therefore, the trial Court shall not be under the influence of this order of remand.

5. Parties to the case shall remain in attendance before the trial Court on 06.05.2015.

(T.P.Sharma)
JUDGE

(I.S.Uboweja)
JUDGE