

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 1026 of 2014**

Sahni (Dead) through LR's

1.a. Shyam Lal, S/o. Ramu Ram, aged about 38 years, R/o. Village Ranpur Khurd, Post Parsa, Tahsil & Police Station Ambikapur, District Surguja (CG)

1.b. Sukh Lal, S/o. Ramu Ram, aged about 43 years, R/o. Village Ranpur Khurd, Post Parsa, Tahsil & Police Station ambikapur, District surguja (CG)

1.c. Shiv Lal, S/o. Ramu Ram, aged about 38 years, R/o. Village Ranpur Khurd, Post Parsa, Tahsil & Plice Station ambikapur, District Surguja (CG) Civil and Revenue District Surguja (CG)

---- Applicants

Versus

1. Manuram S/o. Jagatram, aged about 35 years,
2. Ramadhar S.o. Jagatram, aged about 33 years,
3. Jagatram S/o. Bhanjan Ram, aged about 70 years,
All caste Rajwar, R/o. Village Ranpur Khurd Post Parsa Tahsil & Police Station ambikapur District Surguja (CG)
4. The State of CG through Collector Surguja Ambikapur (CG)

---- Respondents

shri Rishikant Mahobia, counsel for the applicants.
Shir SK Agrawal,, Panel Lawyer for the State/respondent No.4.

Order On Board

21/8/2015

Heard.

2. The applicant has filed the instant MCC in compliance of order dated 15.12.14 passed by Hon'ble Division Bench of this High Court in MCC No.797 of 2014, wherein it has been held in para 2 that " As per service report, prior to passing of the order, respondents No.1 and 3 have died, therefore, the appeal become abated on that day and the applicants are required to file appropriate application under Order 22 of the Code of Civil Procedure." and with aforesaid observation restoration application was dismissed summarily.

3. Along with the instant MCC, application for condonation of delay in filing the application (IA No.01/15) also filed as the instant MCC preferred after 107 days of its limitation.

4. On due consideration, for the reasons mentioned in the IA No.01/15, the same is allowed and the delay in filing the application under Order 22 Rule 9 of the CPC for setting aside abatement, if any, is hereby condoned.

5. The instant MCC is admitted for consideration and also heard finally.

6. As per the facts necessary to appreciate the material, Second Appeal No.1486/99 has been dismissed on 05.8.2014 in compliance of Order dated 10.7.14 whereby the appellants were granted time to carry out necessary amendments after the death of respondent No.1 Mansuram. Prayer for substitution of LR's of died respondent No.1 was allowed by the Coordinate Bench on 20.12.13. On 16.01.14 after the death of respondent No.3 Jagat Ram, an application was filed to delete the name of respondent No.3 but as the appellant has not complied with the order passed by this Court on 10.7.14, the second appeal stands dismissed automatically without further reference to the Bench, as ordered.

7. On perusal of the entire facts, the instant MCC preferred under Order 22 Rule 9 of the CPC for setting aside abatement, if any, after the death of respondents 1 & 3 are hereby allowed. Abatement if any, on account of death of respondents 1 & 3 is hereby set aside.

8. The applicants are directed to incorporate the names of LR's of respondent No.1 as ordered on 20.12.2013, within a month from now in the Second Appeal No.1486/99. The order for deletion of the name

of respondent No.3 shall be made after due consideration in the second appeal on the next date of hearing. The Instant MCC is allowed. SA No.1486/99 is restored to its original number.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

Bini