

COURT OF CHHATTISGARH AT BILASPUR

M.C.C. No. 796 of 2014

Devi Prasad Jaiswal (Dead) Through Legal Heirs

1. Satyandra Jaiswal, S/o. Late Devi Prasad Jaiswal. Aged About 42 Years.
2. Kishore Jaiswal, S/o. Late Devi Prasad Jaiswal, Aged About 38 Years.
3. Smt. Shanti Bai Jaiswal, W/o. Late Devi Prasad Jaiswal, Aged About 69 Years.
4. Shail Jaiswal, W/o. Jagdish Jaiswal, Aged About 48 Years.
5. Rajeshwari Jaiswal, W/o. U. Jaiswal, Aged About 38 Years.
6. Binnu Jaiswal, W/o. Rajendra Jaiswal, Aged About 44 Years.

All are R/o. Sarafa Line, Takhatpur, P.S. Takhatpur, Distt. Bilaspur (C.G.).

---- Applicants

Versus

Sriram Janki Bade Mandir Trust Samiti, Sarafa Line, Takhatpur, Tahsil Takhatpur, Distt. Bilaspur (C.G.), Through Janakram Dewangan, R/o. Sadar Road, Takhatpur, District Bilaspur (C.G.).

---- Respondent

For Applicants : Mr. Goutam Khetrapal, Advocate

For Respondent : Mr. Malay Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

08/02/2016

1. This is an MCC filed to set aside the abatement order dated 19.08.2014 passed in S.A. No.51/2008.
2. The brief facts are that the Second Appeal was filed by late Devi Prasad Jaiswal on 01.02.2008 against the judgment and decree dated 06.11.2007 passed in Civil Appeal No.21-A/2006 by the learned First Additional District Judge, Bilaspur. The said appeal

came up for hearing before this Court on 06.02.2008 and the appeal was admitted for hearing after framing the question of law. Subsequently, during pendency of the appeal, an application was filed on 18.12.2013 informing by the respondent/plaintiff that the sole appellant Devi Prasad Jaiswal died. Subsequently, the legal heirs were not brought on record and, as such, when the appeal came up for hearing on 19.08.2014, it was dismissed as being abated.

3. Now the present applicants have filed the applications under Order 22 Rule 9 of CPC and under Order 22 Rule 3 of CPC along-with the application under Section 5 of Limitation Act explaining the delay to bring the legal heirs with a prayer to set aside the abatement order.
4. Heard the argument and perused the applications wherein it is stated that when the case was listed on 19.08.2014 before that the counsel for the applicants made an endeavor to search out the legal heirs of the sole appellant, however, incidentally they could not be procured and ultimately the suit was dismissed as abated.
5. The application under Order 22 Rule 9 of CPC and application under Order 22 Rule 3 of CPC along-with application under Section 5 of Limitation Act, all are supported by the affidavit. No reply has been filed and formal objection has been made by the respondent, herein non-applicant.
6. After perusal of the application, which is supported by the affidavit, I am satisfied that sufficient reason has been made out to set aside the abatement. Consequently, the order dated 19.08.2014 whereby the appeal was dismissed as abated is set aside. Consequently, the application under Section 5 of the Limitation Act read with application under Order 22 Rule 3 of CPC are also allowed. The delay in bringing the legal heirs of the sole appellant on record is condoned.

7. The Second Appeal No.51 of 2008 is restored to its original number. The counsel for the appellant is directed to brought on record the legal heirs of the sole appellant Devi Prasad Jaiswal within a further period of two weeks. Thereafter, the case be listed for final hearing.
8. With such observation, the MCC stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge

Ashok