

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No.25 of 2016**

1. Smt. Mehtarin Sahu Wd/o Late Bir Singh Sahu, Aged About 25 Years R/o Village Sarora, Police Station Urla, Tahsil And District Raipur, Chhattisgarh
2. Loknath S/o Late Bir Singh Sahu, Aged About 42 Years R/o Village Sarora, Police Station Urla, Tahsil And District Raipur, Chhattisgarh
3. Smt. Dasri Bai W/o Daulal Sahu, Aged About 40 Years R/o Village Tamaseoni, Aarang District Raipur, Chhattisgarh
4. Ramnath Sahu S/o Late Bir Singh Sahu, Aged About 38 Years R/o Village Sarora, Police Station Urla, Tahsil And District Raipur, Chhattisgarh
5. Amarnath Sahu S/o Late Bir Singh Sahu, Aged About 35 Years R/o Village Sarora, Police Station Urla, Tahsil And District Raipur, Chhattisgarh
6. Smt. Kanti Bai W/o Shri Hariram Sahu, Aged About 33 Years R/o Village Chhaura, Tahsil Patan, District Durg, Chhattisgarh
7. Smt. Resham Bai Sahu W/o Shri Harish Sahu, Aged About 31 Years R/o Village Bendri, Tahsil Abhanpur, District Raipur, Chhattisgarh
8. Satrupa Bai W/o Shri Ram Sahu, Aged About 29 Years R/o Village Urkura, Tahsil Dharsiva, District Raipur, Chhattisgarh
9. Rukhmani Bai W/o Shri Khilesh Sahu, Aged About 28 Years R/o Village Hathkhoj, Bhilai, District Durg, Chhattisgarh
10. Prithvi Nath Sahu S/o Late Bir Singh Sahu, Aged About 26 Years R/o Village Sarora, Police Station Urla, Tahsil And District Raipur, Chhattisgarh
11. Jeetnath Sahu S/o Late Bir Singh Sahu, Aged About 18 Years R/o Village Sarora, Police Station Urla, Tahsil And District Raipur, Civil & Revenue District Raipur, Chhattisgarh
(Plaintiffs)

---- Petitioners**Versus**

1. Yusuf Sharif S/o Late Dawood Sharif, Aged About 56 Years R/o Jeevan Vihar Colony, Telibandh, Raipur, Chhattisgarh
2. Wahid Sharif S/o Late Dawood Sharif, Aged About 50 Years R/o D/84, Devendra Nagar, Sector-1, Raipur, Chhattisgarh
3. Iqbal Sharif S/o Late Dawood Sharif, Aged About 48 Years R/o D/84, Devendra Nagar, Sector-1, Raipur, Chhattisgarh
4. Smt. Nishar Begum D/o Late Dawood Sharif, R/o Deendayal Upadhyay Nagar, Raipur, Chhattisgarh
5. Smt. Rajiya Begum, D/o Late Dawood Sharif, R/o E/107, Devendra Nagar, Raipur, Chhattisgarh

6. Smt. Abida Begum D/o Late Dawood Sharif, R/o Byron Bazar, Raipur, Chhattisgarh
7. Smt. Jaikya Begum D/o Late Dawood Sharif, R/o Shailendra Nagar, Raipur, Chhattisgarh
8. State Of Chhattisgarh, Through The Collector, Raipur, Chhattisgarh(Defendants)

---- Respondents

For appellants	: Shri BP Sharma, Advocate.
For respondents 1 to 7	: Shri Suresh Tandon, Advocate
For respondent No.8	: Smt. Shobha Kashyap, Dy. Govt. Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

08.11.2016.

Heard.

2. Learned counsel for the appellants would submit that as the appellant had no knowledge regarding any civil suit filed by their father Bir Singh Sahu, for whom they are the legal representatives before the concerned trial Court, and when they came to know regarding the pendency of the Civil Suit No. 111A/11, immediately without any further delay, they filed interim applications under Order 22 Rule 2 read with Order 22 Rule 9 and Section 5 of the Limitation Act, 1963. He further submits that order dated 07.12.15 passed by the concerned trial Court is bad in law, because the date of knowledge regarding pendency of the said suit was duly established by the appellants/applicants, the said matter was continuously pending before the trial Court despite death of the appellant on 30.6.2011 and information in this regard was given by the counsel of the plaintiff to the Court on 25.7.2012.

Thereafter the appellants had filed the aforementioned applications for setting aside the abatement of said suit and also for impleading themselves as a plaintiffs and for condonation of delay, but the Court below failed to appreciate the entire facts. In this regard learned counsel argued the law reiterated in 2016 (1) SCC 607 *Banwari Lal (dead) by legal representatives and Anr. Vs. Balbir Singh* wherein the Hon'ble Apex Court held in para 9 and para 10 as follows:

“9. Provisions of Order XXII CPC are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law. In *Sardar Amarjit Singh Kalra v. Pramod Gupta*, (2003) 3 SCC 272, a Five Judge Bench of this Court held as under:-

“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. *The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice.* The fact that the khata was said to be joint is of no relevance, as long as each one of them

had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even de hors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. *Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice...*" (emphasis supplied)

10. In *Sital Prasad Saxena (D) by Lrs. v. Union of India* and Ors., (1985) 1 SCC 163, it was observed that the rules of procedure under Order XXII CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. On sufficient cause, delay in bringing the legal representatives of the deceased party on record should be condoned. Procedure is meant only to facilitate the administration of justice and not to defeat the same. The dismissal of the second appeal by the High Court does not constitute a sound and reasonable exercise of its powers and the impugned order cannot be sustained."

3. Learned counsel would further add that the appellants had no knowledge regarding the pendency of the said civil suit as legal heirs, they want to contest the said suit as legal heirs of Bir Singh Sahu Singh on its merits. Hence, they may be permitted to

take part in the suit proceedings and the said suit may be heard on its merits.

4. Learned counsel for the respondents opposed the instant appeal and the arguments submitted on behalf of the appellant.

5. Perused the impugned order dated 07.12.2015 and other documents annexed along with the instant appeal. Also perused the case law cited on behalf of the appellants.

6. On due consideration, it appears that the trial Court erred in holding regarding facts of date of knowledge as demonstrated by the appellant before the Court below. The Court below further erred in holding that the appellants had filed the aforementioned interim applications beyond the period of limitation. For the said delay the appellants had demonstrated the entire facts which were not considered by the Court below and also not considered the entire procedural provision attracted in the matter in its true spirit as reiterated in the case law cited.

7. Upon consideration of the entire material before this Court, the impugned order dated 07.12.15 requires interference.

8. Consequently, order dated 07.12.15 for rejecting the applications filed on behalf of the appellants under Order 22 Rule 2 read with Order 22 Rule 9 and Section 5 of the Limitation Act is hereby set aside. All the interim applications filed by the appellants before the Court below are hereby allowed subject to the payment of total Rs.10,000/- (Rupees Ten Thousand Only) as cost payable to the respondents 1 to 7 and the same shall be

payable on 14.12.2016. Abatement of the said suit on account of death of original plaintiff is hereby quashed. The said civil suit is restored to its original number. The parties represented before this Court be directed to appear either in person or through their respective counsel before the Court below on **14.12.2016**. The Court below is directed to grant opportunity to amend the said civil suit to the appellants as per provisions of law and thereafter after affording opportunity of any further pleading required by the appellants in the matter as per the procedural law and thereafter after providing opportunity to counter the said pleading as per the provisions of law by the respondents/defendants. The trial court is directed to dispose of the matter as expeditiously as possible preferably within six months from 14.12.2016. The parties may file copy of the order before the trial Court for compliance.

9. Registrar (Judl.) is also directed to send a copy of the order to the concerned trial Court for compliance through usual and fax mode immediately.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE