

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 149 of 2016**

Chokhan Singh, S/o. Shri Sahib Singh, aged about 40 years,
R/o Village Barvasan, Post Darri, Tahsil Pendraroad, District
Bilaspur (CG). **---- Applicant**

Versus

1. Jarhu (dead), S/o Mohan Singh.
- 1.A Shivprasad, S/o late Jarhu, aged about 62 years, Caste Gond,
R/o Village Barvasan, Post Darri, Tahsil Pendraroad, District
Bilaspur (CG).

(Respondent No.1.A in second appeal)
2. Loksingh, S/o Shri Jawahar Singh, Caste Gond, R/o Village
Barvasan, Post Darri, Tahsil Pendraroad, District Bilaspur (CG).

(Respondent No.4 in second appeal).
3. State of Madhya Pradesh (Now Chhattisgarh) through the
Collector, Bilaspur (CG).

(Respondent No.5 in second appeal)

---- Non-applicants

For Applicant : Shri Rakesh Pandey, Advocate.
For Non-applicant No.2: Shri Dharendra Prasad Mishra, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

01/09/2016

(1) The second appeal No.425 of 2009 filed by appellant/defendant
No.1, which has been dismissed by order of this Court dated
13.10.2015 as abated.

(2) Heard on I.A.Nos.1 & 2 i.e. application under Section 5 of the
Limitation Act and I.A. No.3 i.e. application under Order 22 Rule 4 of
CPC.

(3) It is to be noted that respondent No.2 has died on 03.10.2012 and respondent No.3 has died on 16.04.2015 and application for substituting the legal representatives of respondents No.2 & 3 was filed on 03.02.2016 and there is delay of 03 years, 01 month & 02 days in respect of respondent No.2 and delay of 140 days in respect of respondent No.3.

(4) Learned counsel appearing for the applicant submits that the applicant was not in touch with respondents No. 2 & 3, therefore, he could not know about death of respondent No.2 & 3 and immediately after he came to know in that regard he has approached his counsel and filed these applications for substitution of legal representatives and setting aside the abatement.

(5) Taking into consideration the facts and circumstances of the case and considering the grounds raised in the application for substituting the name of legal representatives of respondents No.2 & 3 and keeping in view the principle laid down by Their Lordships of the Supreme Court in the matter of **Banwari Lal & Others Vs. Balbir Singh**¹, therefore, the aforesaid applications are allowed and second appeal is restored to its original number.

(6) Accordingly, M.C.C. No.149/2016, therefore, is allowed and Second Appeal No.425/2009 is restored to its original number.

Sd/-
(Sanjay K. Agrawal)
Judge

L/-

¹ (2016) 1 SCC 607