

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.7289 of 2007

(Arising out of order dated 29-6-2007 in Revision Case No.132/A-6/2004-05 of the learned Board of Revenue, Chhattisgarh, Bilaspur)

Padma Bai, W/o Gosai Ram, aged about 56 years, R/o Village Sonbarsa, Police Station Kharsia, Tahsil Kharsia, District Raigarh (C.G.)

---- Petitioner

Versus

1. Board of Revenue, Bilaspur, Through the Member, Board of Revenue, Bilaspur (C.G.)
2. Sub-Divisional Officer, Kharsia, District Raigarh (C.G.)
3. Tahsildar, Kharsia, District Raigarh (C.G.)
4. Kanhaiyalal (since deceased), Through his legal heirs, viz.

4A. Subhash, S/o Late Kanhaiyalal, aged about 20 years,

4B. Prithvipal, S/o Late Kanhaiyalal, aged about 17 years, Through his natural guardian mother Chaitmati.

4C. Chaitmati, Widow of Late Kanhaiyalal.

Respondent No.4A to 4C all R/o Hamalpara, Kharsia, Tahsil Kharsia, District Raigarh (C.G.)

5. Gosairam, S/o Jagbandhu, Occupation Agriculturist, R/o Village Sonbarsa, Tahsil Kharsia, District Raigarh (C.G.)

---- Respondents

For Petitioner: Mr. Malay Shrivastava, Advocate.

For Respondents No.2 and 3: -

Mr. Arvind Dubey, Panel Lawyer.

For Respondents No.4A, 4B and 4C: -

None present, though served.

For Respondent No.5: Mr. Sanjay Patel, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/11/2017

1. Learned counsel for the petitioner submits that contesting non-applicant Kanhaiyalal died on 30-1-1995 and when the petitioner

came to know about the death of Kanhaiyalal, he immediately filed application on 6-2-2002, that has been rejected on the ground of delay and the application has been held to be abated against which this writ petition has been preferred. He further submits that the order impugned is unsustainable and bad in law.

2. None present for respondents No.4A, 4B and 4C, though served.
3. Application for mutation filed by the petitioner herein was allowed by the Tahsildar which was challenged by Late Kanhaiyalal in appeal and the appeal was allowed by the Sub-Divisional Officer, thereafter, the further appeal preferred by the petitioner herein was dismissed by the Additional Commissioner, Bilaspur Division, Bilaspur against which the petitioner filed revision before the Board of Revenue.
4. It is well settled law that the provisions of Order 22 of the CPC are not applicable in revision, but it is also well settled that LRs must be brought on record within reasonable period. It is the case of the petitioner that he was not aware of the date of death of Kanhaiyalal and as soon as he came to know, he filed application for substitution. The Board of Revenue ought to have conducted enquiry before rejecting the application.
5. Considering the facts and circumstances of the case, since the petitioner was not aware of the date of death of respondent No.4 herein namely Kanhaiyalal, therefore, he was justified in preferring application for substitution immediately after coming to know about the death of deceased Kanhaiyalal, on 6-2-2002 which cannot be said to be barred by limitation. As held herein-above, the provisions of Order 22 of the CPC are not applicable to revision

proceeding, especially to revenue revisions.

6. For the foregoing reasons, order dated 29-6-2007 passed in Revision Case No.132/A-6/2004-05 by the Board of Revenue, Chhattisgarh, Bilaspur is hereby set aside and the matter is remitted back to the Board of Revenue which shall after noticing all the respondents therein and after hearing the parties on merits, decide the case within six months from the date of receipt of a copy of this order.
7. The writ petition is allowed to the extent indicated herein-above.
No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma