

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.471 of 2016

(Arising out of order dated 13-7-2016 in Civil Suit No.23 A/2014 of the learned 1st Additional Civil Judge Class-II, Basna, Distt. Mahasamund)

1. Goutam, aged 45 years,
2. Smt. Taruni, aged 35 years, D/o Sahdeo,
3. Smt. Uttara Bai, aged 32 years, D/o Dayaram, W/o Sango,
4. Smt. Janek, D/o Daya Ram, W/o Saraj,
5. Mst. Rupa Bai, aged 35 years, D/o Late Sakha Ram,
6. Mahendra Kumar, aged 55 years, S/o Sakha Ram,
7. Sanatan, aged 24 years, S/o Sakha Ram,
8. Chiya alias Purushottam, aged 22 years, S/o Sakha Ram,
9. Sankirtan, aged 26 years, S/o Sakha Ram,
10. Niranjana, aged 30 years, S/o Sakha Ram,
11. Abhimanu, aged 45 years, S/o Sakha Ram,

All above R/o Village Mohka, P.C.No. 79/12, R.I. Circle and Tehsil Basna, District Mahasamund (C.G.)

---- Petitioners

Versus

1. Bisi, S/o Kunjman (Dead) Through LRs :

(a) Hirdiyanand, S/o Late Bisi

(b) Smt. Parvati, D/o Late Bisi

(c) Smt. Majhiya, D/o Late Bisi

(d) Smt. Suru, D/o Late Bisi

(e) Smt. Mair, D/o Late Bisi

All Agriculturist R/o Village Mohka, P.S. & Tehsil Basna, District Mahasamund (C.G.)

2. Asha Ram Barik, S/o Duryodhan (Dead) Through LRs :

(a) Savyasanchi Barik, aged 57 years, S/o Late Asha Ram Barik, Caste Kolta, R/o Basna, Post Basna, P.S. & Tehsil Basna, District Mahasamund (C.G.)

(b) Sakrajit Barik, aged 46 years, S/o Late Asha Ram Barik, Caste Kolta, R/o Village Mohka P.S. & Tehsil Basna, District Mahasamund (C.G.)

(c) Smt. Tilotama, aged 37 years, D/o Late Asha Ram Barik, Caste Kolta R/o Village Beldih, P.S. & Tehsil Pithora, District Mahasamund (C.G.)

(d) Mst. Devki, aged 80 years, Wd/o Late Asha Ram, Caste Kolta, R/o Village Mohka, Post Singhanpur, P.S. & Tehsil Basna, District Mahasamund (C.G.)

3. Jagdish, aged 38 years, S/o Duryodhan Barik,

4. Hadu Ram, aged 35 years, S/o Duryodhan Barik,

5. Mst. Chitra Bai, aged 50 years, D/o Duryodhan Barik,

6. Mst. Ayodhya Bai, aged 58 years, D/o Duryodhan Barik,

All R/o Village Mohka, P.C.No.79/12, Tehsil & P.S. Basna, District Mahasamund (C.G.)

7. Shashi alias Jagdish, aged 45 years, S/o Heeradhar

8. Rasik, aged 40 years, S/o Heeradhar

9. Mst. Gadain Bai, aged 42 years, D/o Heeradhar

All above R/o Mudpara, P.S. Saraipali, District Mahasamund (C.G.)

10. Mst. Surendra Bai, aged 35 years, D/o Heeradhar, R/o Village Chibarra, Tehsil Mahasamund, District Mahasamund (C.G.)

11. State of Chhattisgarh, Through Collector, Mahasamund (C.G.)

12. Kishore Kumar Barik, aged 35 years, S/o Late Asha Ram Barik, Agriculturist, R/o Village Mohka, P.C.No.79/12, R.I. Circle and Tehsil Basna, District Mahasamund (C.G.)

---- Respondents

For Petitioners: Mr. S.N. Nande, Advocate
 For Respondents No.1(a) to (e), 2(a) to (d), 3 to 6 and 12: -
 Mr. H.B. Agrawal, Senior Advocate with
 Mrs. Prabha Sharma, Advocate.
 For Respondent No.11 / State: -
 Mr. Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

22/09/2017

1. Plaintiff No.1 Bisi died on 3-9-1997 and the suit was declared abated qua plaintiff No.1. The suit was ultimately decreed on 5-8-2014 and the defendants preferred appeal against the decree dated 5-8-2014 which was remanded by the first appellate Court on 27-4-2016 to the trial Court to decide the effect of abatement qua the then plaintiff No.1 Bisi, but this time, the other plaintiffs No.2 to 6 filed application for setting aside the abatement under Order 22 Rule 9 of the CPC read with Section 5 of the Limitation Act and that application has been allowed by the impugned order against which this writ petition has been preferred.
2. Learned counsel for the petitioners submits that the trial Court could not have travelled beyond the remand order passed by the first appellate Court and while entertaining the application the trial Court has committed a legal error. Therefore, the impugned order deserves to be set aside.
3. Learned Senior Counsel appearing for respondents No.1(a) to (e), 2(a) to (d), 3 to 6 and 12 opposes the submission of learned counsel for the petitioners and submits that there is no bar in making application for setting aside the abatement, as earlier, no application was filed and the suit was declared abated qua plaintiff No.1.
4. I have heard learned counsel for the parties and perused the order impugned as also other documents filed along with the writ petition with utmost circumspection.

5. Admittedly, during the pendency of suit, the suit of plaintiff No.1 has been declared abated qua plaintiff No.1 only and the appellate Court has remanded to consider the effect of abatement.
6. The Supreme Court in the matter of **Banwari Lal (Dead) by Legal Representatives and another v. Balbir Singh**¹ has held that the provisions of Order 22 of the 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. Their Lordships observed in paragraph 9 of the report as under: -

“9. Provisions of Order 22 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*², a five-Judge Bench of this Court held as under: (SCC pp.300-01, para 26)

“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*

1 (2016) 1 SCC 607

2 (2003) 3 SCC 272

*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 Court³ 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 scuttle 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)

7. The Supreme Court has also relied upon a decision in the matter of **Sital Prasad Saxena v. Union of India**⁴ in which the Supreme Court has held that the rules of procedure under Order 22 of the 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.
8. In view of the aforesaid enunciation of law and further taking into account the fact that the first appellate Court has not restrained the respondents / plaintiffs in filing application and they are always at liberty to file application for setting aside abatement, it cannot be held

³ Amarjit Singh v. Pramod Gupta, 1991 SCC OnLine Del 131 : (1991) 20 DRJ 337

⁴ (1985) 1 SCC 163

that the application for setting aside abatement was not maintainable.

9. As a fallout and consequence of aforesaid discussion, the writ petition is liable to be dismissed and it is hereby dismissed. No order as to cost(s). However, the trial Court is directed to proceed further with the trial of the suit.
10. A copy of this order be sent to the trial Court forthwith for proceeding further with the matter.

Sd/-
(Sanjay K. Agrawal)
Judge

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