

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 693 of 2016

1. Bajaroo S/o Rambax Gond, Aged About 78 Years, R/o Village Ghinauchi, Tahsil Marwahi, District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Guljar Singh S/o Jarman Singh, Aged About 43 Years, R/o Ghinauchi, Tahsil Marwahi, District Bilaspur, Chhattisgarh
2. Fatte Singh S/o Jarman Singh, Aged About 68 Years, R/o Ghinauchi, Tahsil Marwahi, District Bilaspur, Chhattisgarh
3. Umed Singh S/o Sher Singh, Aged About 50 Years, R/o Ghinauchi, Tahsil Marwahi, District Bilaspur, Chhattisgarh
4. Kalyan Singh S/o Sher Singh, Aged About 45 Years, R/o Ghinauchi, Tahsil Marwahi, District Bilaspur, Chhattisgarh
5. Anand Singh S/o Sher Singh, Aged About 43 Years, R/o Ghinauchi, Tahsil Marwahi, District Bilaspur, Chhattisgarh
6. Sewa Singh S/o Sher Singh, Aged About 41 Years, R/o Ghinauchi, Tahsil Marwahi, District Bilaspur, Chhattisgarh
7. Chowah Singh S/o Sher Singh, Aged About 39 Years, R/o Ghinauchi, Tahsil Marwahi, District Bilaspur, Chhattisgarh
8. Budhiya Bai W/o Sher Singh, Aged About 73 Years, R/o Ghinauchi, Tahsil Marwahi, District Bilaspur, Chhattisgarh
9. Hetram S/o Shiv Bax, Aged About 72 Years, R/o Ghinauchi, Tahsil Marwahi, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner – None.

For Respondents 1 and 2 – Shri Ankit Singhal, Advocate.

For Respondents 3, 4, 5, 6, 7 and 9 – None, though served as per office note dated 25-04-2017.

Notice issued to Respondent No.8 Budhiya Bai returned unserved as she had died.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

28-04-2017

1. None appeared for the petitioner when the matter is taken up for hearing.
2. This is admitted WP227 and as the matter involves a question of law, the instant WP227 heard finally even without representation of the petitioner.
3. As per brief facts, Civil Appeal No.39A/14 (Bajaroo V. Guljar and 9 others) was pending before the Additional District Judge Pendra Road, Distt.

Bilaspur, C.G. In the said proceeding appellant Bajaroo had filed an application under Order 22 Rule 9 of the CPC for deletion of R-10 Belabai as she died on 01-01-2010 leaving their two LR's. and prayed that the name of Belabai may be deleted from the cause title, LR's. of Belabai may be substituted in the cause title and the appeal may be heard. The appellate court vide order dated 04-08-2016 held that as per Article 120 of the THIRD DIVISION - APPLICATIONS, PART I –Application in specified cases in the schedule of Limitation Act, 1963, the appellant within limitation has not filed the application for substitution of LR's. of died respondent Belabai, hence, dismissed the application and held that the entire appeal stands abated, hence disposed of the matter finally as abated. Against the said order the petitioner/appellant preferred the instant WP227.

4. As a settled law, if the respondent died and within limitation no any application filed for the substitution of LR of the respondent, then the said matter stands abated against the said respondent only, but the said fact cannot be extended for the abatement against the other respondents living and represented and otherwise. The Court below while deciding the application under Order 22 Rule 9 of the CPC has not appreciated this fact as to how the entire appeal stands abated only after death of R-10. As per settled law, after the death of respondent the appeal is abated so far as it relates with the said respondent, but the appeal shall continue against the other respondents as per law. The court below committed a grave mistake of law and the authority granted under the Article 227 of the Constitution of India requires interference in the matter.

5. Consequently, the instant WP227 is hereby allowed. The order passed by the Additional District Judge Pendraroad, District Bilaspur, C.G. in appeal No.39A/14 dated 04-08-2016 is hereby set aside so far as it relates with the dismissal of appeal against the other respondents. The appellate court is

directed to restore the said appeal in its original number and further directed to proceed to hear the said appeal in accordance with law against the other respondents except Belabai (R-10).

6. The parties may file copy of this order before the appellate court for compliance.

7. Registrar (Judicial) is also directed to send copy of the order to the court below for compliance.

8. The instant WP227 is hereby allowed and disposed of.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE