

HIGH COURT of CHHATTISGARH, BILASPUR**MCC No.888 of 2015**

1. Subam S/o Late Sukuldhara, Aged About 45 Years
 2. Sadaram S/o Late Sukuldhara, Aged About 70 Years
 3. Mst. Lacchan Dai W/o Late Doda, Aged About 55 Years
 4. Rajmal S/o Late Sukuldhara, Aged About 57 Years
 5. Dashmuh S/o Late Doda, Aged About 30 Years
 6. Sukhram S/o Late Doda, Aged About 28 Years
- All R/o Rajpur Para, Sargi Guda, P.O. Munda Gao, Tehsil And Distt. Bastar, Chhattisgarh.

---- Applicants**Versus**

1. Bichabai W/o Saras Aged About 45 Years D/o Late Bhagat, R/o Marhara Gulpur, P.O. Guriya, Tehsil And District Bastar, Chhattisgarh
2. The State Of Madhya Pradesh (Now Chhattisgarh) Through The Collector, Bastar, Chhattisgarh.

---- Respondents

For Applicants	:	Shri Sameer Uraon, Advocate.
For State	:	Ms. M. Asha, Panel Lawyer.
For respondent/Sukreet Das	:	Shri R.N. Jha, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****27/07/2017**

1. The present is a MCC which was filed seeking for restoration of Second Appeal No.1082/1998 which got dismissed as having abated vide order dated 23/01/2014. For ready reference, the operative portion of order dated 23/01/2014 is reproduced herein as under:

“.....Now the service report is received which says that the sole appellant has died. Moreover, there is no application on behalf of the legal heirs of the appellant in this case. From the submissions made by Shri Jha, it is reflected that Respondent/Plaintiff No.1 has also died somewhere in the year 2008. In view of the fact that the sole appellant and Respondent No.1 have died, by force of law, the instant appeal gets abated and the same is accordingly dismissed as having

been abated.....”

2. After about little less than 2 years time, the present MCC was filed on 23/09/2015. Along with MCC an application under Order 22 Rule 3 of CPC for substitution of legal heirs of the Applicant Sukulldhar, who had expired on 27/08/2011, and another application i.e. under order 22 Rule 4 CPC were filed seeking for impleading as legal heir of the Respondent Bhagat namely Bichabai as the legal heir of the Respondent No.1 who had died on 25/09/2008.
3. This court, at the first instance, allowed the application for substitution vide order dated 30/03/2016 on the basis of which the legal heir of the original Appellant-Sukulldhar as well as Respondent-Bhagat were brought on record. Subsequently an objection was raised by another lady in the name of Bichabai with an affidavit filed on 06/05/2016 which was again an application under Order 22 Rule 4 CPC stating that she is infact the original Bichabai, also known as Sukibai, and that she is not in fact the daughter of Bhagat and that she knows Bhagat, who had died issue less.
4. This application was supported with an affidavit. Subsequent to this application being filed, a direction was given to the counsel for the Applicants to file an affidavit with the photographs of the newly incorporated legal heir of original Respondent No.1 namely Bichabai vide order dated 10/05/2016. Though over 14 months have passed and in between the matter has been fixed on large number of occasions, the said Bichabai who has been impleaded as party in the present case as Respondent No.1 in place of Bhagat (the original

Respondent), has not been able to file an affidavit with photographs establishing that she is infact Bichabai and that she is the daughter of Bhagat. Instead of filing affidavit with photographs of the person who has been impleaded as party respondent, the counsel for the Applicants, on the contrary, has filed an application under section 151 of CPC seeking for allowing the application moved by one Sukreet Das claiming as one of the legal heir of the deceased Respondent No.1. This application for bringing him as legal hair is on the basis of an alleged Will which has been allegedly executed by Bhagat during his lifetime.

5. Be that as it may, the issue so far as incorporating Bichabai as Respondent No. 1 is concerned, it is still not clear as to whether Bichabai who has been impleaded as Respondent No.1 is infact the legal heir of Bhagat or not. In spite of direction being given by this court to the Applicants as early as on 10/05/2016, no affidavit, photographs or details have been brought on record to establish that she is infact Bichabai and is the legal hair of deceased Respondent-Bhagat. On the contrary, there is an affidavit and photographs and statement made by another lady Bichabai categorically stating that she is Bichabai and that she is not the daughter of Bhagat and Bhagat, Respondent in the instant case, has died issue less.
6. The Applicants is not able to give any plausible explanation to this dispute which has been arisen on an affidavit filed by another lady Bichabai and Bichabai who has been impleaded as Respondent by the Applicants is not ready to appear before the court by filing an

affidavit with photographs duly affixed to prove her identity. This court is of the prima-facie opinion that the person who has been impleaded as Bichabai in the present application has perhaps impersonated herself as a legal representative of the original defendant deceased-Bhagat so as to ensure restoration of the Second Appeal.

7. In the absence of any evidence, proof or record to accept the Respondent No.1 as the legal representative of the deceased Bhagat, the original defendant, and in spite of sufficient opportunity being granted, the Applicants failing to provide sufficient proof in this regard, this court is of the opinion that the present MCC seeking for restoration of Second Appeal No. 1082 of 1998 does not have any merits in the light of subsequent developments that has arisen and the MCC.
8. Thus, in the absence of any proper legal heir of the deceased Respondent No.1 Bhagat being brought on record, the MCC seeking restoration of an Appeal which has been dismissed of having abated, deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge