

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP227 No. 766 of 2016**

1. Hetram S/o Shiv Bax, Aged About 65 Years, R/o Ghinauchi, Tah Marwahi, Distt. Bilaspur, (Chhattisgarh)

**---- Petitioner**

**Versus**

1. Guljar Singh S/o Jarman Singh, Aged About 50 Years, R/o Ghinauchi Tah Marwahi, Distt. Bilaspur, (Chhattisgarh)
2. Fatte Singh S/o Jarman Singh, Aged About 68 Years, R/o Ghinauchi Tah Marwahi, Distt. Bilaspur, (Chhattisgarh)
3. Umed Singh S/o Sher Singh, Aged About 50 Years, R/o Ghinauchi Tah Marwahi, Distt. Bilaspur, (Chhattisgarh)
4. Kalyan Singh S/o Sher Singh, Aged About 50 Years, R/o Ghinauchi Tah Marwahi, Distt. Bilaspur, (Chhattisgarh)
5. Ananad Singh S/o Sher Singh, Aged About 43 Years, R/o Ghinauchi Tah Marwahi, Distt. Bilaspur, (Chhattisgarh)
6. Sewa Singh S/o Sher Singh, Aged About 41 Years, R/o Ghinauchi Tah Marwahi, Distt. Bilaspur, (Chhattisgarh)
7. Chowa Singh S/o Sher Singh, Aged About 39 Years, R/o Ghinauchi Tah Marwahi, Distt. Bilaspur, (Chhattisgarh)
8. Budhiya Bai, Wd/o Sher Singh, Aged About 75 Years, R/o Ghinauchi Tah Marwahi, Distt. Bilaspur, (Chhattisgarh)
9. Bajaroo S/o Ram Bax, Aged About 75 Years, R/o Ghinauchi Tah Marwahi, Distt. Bilaspur, (Chhattisgarh)

**---- Respondents**

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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.

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

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**Hon'ble Shri Justice Chandra Bhushan Bajpai**

**Order on Board**

**28-04-2017**

1. As the matter relates with a question of law, the matter heard finally even in the in absence of the petitioner.
2. As per the facts of the case, Civil Appeal No.40A/14 (Hetram V. Guljar and 9 others) was pending before the Additional District Judge Pendraroad, Distt. Bilaspur, C.G. There is another first appeal pending before the same Court as Appeal No.39A/14 (Bajaru V. Guljar and 9 others), in the said civil

appeal, appellant Bajarū had filed an application under Order 22 Rule 9 of the CPC . In the said application, it was submitted that respondent Belabai (R-10) had died on 01-01-2010 in the said matter. The said interim application was dismissed and as the respondent Belabai was respondent in both the appeal, with this, the appellate court finds that the appeal as a whole is abated on account of death of R-10 only in the present matter as there is no any application for deletion of said respondent and substitution of LRs. of said respondent. Against the said order the petitioner preferred the instant WP227 and sought relief that the order dated 04-08-2016 be set aside regarding the dismissal of the appeal as a whole the ground that the appeal is abated.

2. As a settled law, if there would have been any sole respondent and no any application had been filed for the setting aside the abatement and for substitution of LRs. of sole respondent, then the matter stands abated as a whole, but in the impugned order dated 04-08-2016, the court has not answered the legal question whether on account of death of R-10 Belabai how the entire first appeal may be dismissed as abated whole. With this, the first appellate court committed illegality on account of death of Belabai, the said first appeal cannot stand abated against the other respondents. With this, the order passed by the first appellate court dated 04-08-2016 requires interference. Under the authority of this Court under Article 227 of the Constitution of India the present WP227 is hereby allowed. The order passed by the first appellate court dated 04-08-2016 is hereby set aside to the extent that the whole first appeal stands abated against all the respondents. The said first appeal is restored to its original number. The court below is directed to hear the matter in accordance with law so far as it relates to other respondents as the first appeal is restored so far as hearing against other respondent is concerned.

3. The parties may submit copy of this order before the appellate court for compliance and further proceeding.

4. Registrar (Judicial) is also directed to send copy of the order to the concerned appellate court for compliance.
5. The petition allowed.

Sd/-  
**(Chandra Bhushan Bajpai)**  
**JUDGE**