

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 456 of 2016

1. Bechu Prasad Gupta S/o Shri Rambriksha Sao, Aged About 56 Years At Present 65 Years By Caste Sahu, R/o Village Durgapara, Thana And Tahsil Bagicha, Civil And Revenue Distt. Jashpur, Chhattisgarh
2. Nandlal Gupta S/o. Shri Rambriksha Sao, Aged About 52 Years At Present 62 Years By Caste Sahu, R/o Village Durgapara, Thana And Tahsil Bagicha, Civil And Revenue Distt. Jashpur Chhattisgarh
3. Manohar Radhe S/o. Shri Rambriksha Sao, Aged About 48 Years At Present 58 Years By Caste Sahu, R/o Village Durgapara, Thana And Tahsil Bagicha, Civil & Revenue Distt. Jashpur Chhattisgarh

---- Petitioners

Versus

- 1 (A) Smt. Rampyari Bai W/o. Late Shri Chamru Sao, Aged About 52 Years R/o. Sadar Road Ambikapur, P. S. Ambikapur, Civil And Revenue Distt. Surguja Chhattisgarh
- 1 (B) Smt. Sushila @ Ghutari w/o Shri krishna Sahu, aged about 28 years, r/o Mandalpara Nagar Baikunthpur, P.S. Baikunthpur, Civil and Revenue Distt. Korea (C.G)
- 1 (C) Smt. Meena @ Tuni, w/o Shri Krishna Sahu, aged about 27 years, R/o village Maini, Thana & Tahsil Bagicha, Civil and Revenue Distt. Jashpur (C.G)
- 1 (D) Smt. Urmila W/o. Shri Ramesh Gupta, Aged About 26 Years R/o. Ambikapur, P. S. And Tahsil Ambikapur, Distt. Surguja Chhattisgarh
- 1 (E) Smt. Sheela W/o. Shri Vinod @ Navrang Sao, Aged About 25 Years R/o. Narharpara Lakhanpur, P. S. Ambikapur, Distt. Surguja Chhattisgarh
- 1 (F) Ku. Sangeeta, D/o Late Shri Chamru Sao, aged about 23 years, R/o. Sadar Road Ambikapur, P.S. Ambikapur, Civil & Revenue Distt. Surguja (C.G)
- 1 (G) Umesh S/o Late Shri Chamru Sao, Aged About 21 Years R/o. Sadar Road Ambikapur, P. S. Ambikapur, Civil And Revenue Distt. Surguja Chhattisgarh
- 1 (H) H Paras S/o. Late Shri Chamru Sao, Aged About 19 Years R/o. Sadar Road Ambikapur, P. S. Ambikapur, Civil And Revenue Distt. Surguja Chhattisgarh
2. Prakash Chandra Agrawal, s/o Shri Chiranjilal Agrawal, aged about 40 years, r/o Kharsiya Road, Ambikapur, Thana & Tahsil Ambikapur, Civil and Revenue Distt. Surguja (C.G).
3. State of Chhattisgarh through Collector Ambikapur, Civil & revenue Distt. Surguja (C.G).

---- Respondents

For Petitioners	:	Mr. Sunil Tripathi with Mr. Sunil Sahu, Advocate
For Respondent No. 1(B)	:	Ms. Sarina Khan, Advocate
For Respondent No. 1(A), 1(G) & 1(H)	:	Mr. Anurag Singh, Advocate
For State/ Respondent	:	Mrs. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

18.01.2018

Heard

1. The instant petition is against the order dated 19.07.2013 wherein an application filed by the petitioners/ plaintiffs to bring the legal heirs of defendant No. 2 Smt. Chandri Devi in original suit was dismissed.
2. Learned counsel for the petitioner would submit that even if the provisions have been wrongly quoted to bring the legal representatives, the Court should have considered the true spirit of the petition to bring the legal and the facts which were existing in this case. It is contended that original defendant No. 2 Smt. Chandri Devi daughter of Tilak Sahu died on 06.03.2012 and before that she had filed her written statement. After filing of the written statement, she was represented by counsel, however, she was proceeded ex-parte on 24.02.2010 and thereafter when the application under order 22 rule 4 (4) of CPC was moved to bring the legal heirs of the defendant No.2 on 09.11.2012, the same was dismissed on 30.09.2017 holding that wrong provisions have been quoted and no plausible explanation has been given to

condone the delay. He further submits that the petitioners may be given liberty to move suitable application to condone the delay alongwith application u/s 5 of the Limitation Act. He further submits that the application moved under order 22 rule 4 (4) of CPC may be treated as the application under order 22 rule 9 of CPC. He has placed reliance on **(2016) 1 SCC 607 Banwarilal (Dead) By Legal Representatives Vs. Balbir Singh** and would submit that the nature of this application to bring LRs are not penal in nature and sufficient cause is shown for failure of bringing the LRs within time.

3. Counsel for respondent No. 1 (A) 1(B) 1(G) and 1 (H) vehemently oppose the same.
4. A perusal for the suit would show that the suit was filed for declaration, partition and possession and permanent injunction. With respect to bring the legal heirs on record, the Supreme Court in case of **Ramdas Shivram Sattur v. Rameshchandra Popatlal Shah & Others (2007) 8 SCC 400** has reiterated the law laid down in case of **Mithailal Dalsangar v. Annabai Devram Kini** reported in **(2003) 10 SCC 691** and has affirmed the legal position that the abatement results in denial of hearing on the merits of the case, therefore, the provision of abatement has to be construed liberally. It was also held that the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally.
5. Similar view has been followed in **(2016) 1 SCC 607 Banwarilal (Dead) By Legal Representatives Vs. Balbir Singh** wherein also

the Supreme Court has held that the cases of abatement cannot be stated to be penal in nature for punishing erring parties.

6. The principle of ratio as has been laid down is that a simple prayer for bringing legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside abatement. It is also held that prayer for setting aside abatement as regards one of the plaintiff can be directed as prayer for setting aside the abatement of the suit notice entirety. The ratio is further that a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. It further held that the abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.

7. The Supreme Court further held that the courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of 'sufficient cause' within the meaning of sub-rule (2) of Rule 9 of Order 22 and of Section 5 of the Limitation Act deserves to be given weight.
8. In the instant case, the order would reflect that the applicants moved an application for bringing legal representatives on record on 09.11.2012 thereby to bring the legal representatives of defendant No. 2 Chandri Devi who died on 06.03.2012, the delay of about little more than 8 months was caused. In the context of the principles laid down by the Supreme Court in *(2007) 8 SCC 400 Ramdas Shivram Sattur (Supra)* the records would reveal that the application to bring the legal representatives on record was moved thereby implicit prayer was there to set aside the abatement against defendant No. 2 which has already been caused. The fact that applicant has not filed an application to condone the delay u/s 5 of the Limitation Act is considered, in the opinion of this Court the applicant may be given an opportunity/liberty to file application u/s 5 of the Limitation Act stating the reasons for such delay.

9. In the result, the impugned orders dated 19.07.2013 & 30.09.2013 whereby the application under Order 22 Rule 3 of CPC and the application under Order 22 Rule 4 (4) of CPC were dismissed are set aside. The petitioners, if so advised, may file applications u/s 5 of the Limitation Act and in the event of such an application being filed, then the application under Order 22 Rule 4 may also be considered to be under Order 22 Rule 9 of CPC to set aside the abatement and to bring the legal heirs on record. The application u/s 5, if so filed, it shall also be considered on its own merits.
10. With such observations, this petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge

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