

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 443 of 2019**

1. Smt. Janki Bai (widow) W/o Late Krishanlal Navrange aged about 55 years
2. Mahendra S/o Late Shri Krishanlal Navrange, aged about 27 years
3. Monika D/o Late Shri Krishanlal Navrange, aged about 20 years

Petitioner No. 1 to 3 are R/o Village Newdha, Tahsil Simga, Distt. Balauda Bazar Chhattisgarh

4. Manju D/o Late Shri Krishanlal Navrange aged about 35 years R/o Village Bhumiyan, Tahsil Titra, Distt. Raipur Chhattisgarh
5. Madhu D/o Late Shri Krishanlal Navrange, aged about 25 years, R/o Village Gidhauri, Tahsil and Thana Palri, Distt. Balauda Bazar Chhattisgarh

---- **Petitioners(Non-applicant)**

Versus

1. Smt. Pancho Bai D/o Amar Singh Navrange, Aged about 65 years, Occupation Agriculture R/o Village Newdha, P.H. no. 23 R.N.M. & Tahsil Simga, Distt Balauda Bazar Bhatapara Chhattisgarh

---**Respondent(Plaintiff)**

2. Nandlal S/o Amar Singh Navrange aged about 60 years
3. Jhulan Bai Widow of Suklal Navrange, aged about 58 years
4. Virendra S/o Suklal Navrange aged about 36 years
5. Ramkali D/o Suklal Navrange, aged about 36 years
6. Anju D/o Suklal Navrange, aged about 32 years

Respondent No. 2 to 6 are R/o Village Newdha, P.H. No. 23 R.N.M. and Tahsil Simga, Distt. Balauda Bazar Bhatapara, Chhattisgarh

7. State of Chhattisgarh through Collector Balauda Bazar Chhattisgarh
- Non-applicants**

For Petitioners	:	Mr. Akhilesh Kumar, Advocate.
For Respondent No. 7	:	Mr. Apoorv Goyal, Panel Lawer

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/06/2019

1. Heard on the question of admission and grant of interim relief.
2. Petitioners herein are aggrieved against the order dated 26-2-2019 by which the respondent No. 1's/plaintiff's applications under Order 22 Rule 9 of the CPC, Section 5 of the Limitation Act, 1963 and Order 22 Rule 4 of CPC for substitution of defendant No. 2 -Krishnalal have been granted by the learned appellate court.
3. Learned counsel for the petitioners would submit that once the respondent No. 1's/plaintiff's application for substitution has been rejected on 15-11-2017 and that order has become final, again application under Order 22 Rule 9 of the CPC and Section 5 of the Limitation Act, 1963 could not have been entertained by the learned appellate court, therefore, impugned order deserves to be set aside. He relied upon the judgment of the Madhya Pradesh High Court in the matter of **Manorama v. Chittar**¹
4. I have heard learned counsel for the petitioners at length, perused the impugned order and went through the record with utmost circumspection.
5. Defendant No. 2 -Krishnalal died on 27-4-2017 and for his substitution, respondent No. 1/plaintiff filed an application under Order 22 Rule 4 of the CPC on 2-8-2017 which was rejected by the appellate court on 15-11-2017 holding that it was filed after a period of 90 days, as it was not accompanied with the application for setting aside abatement and application for condonation of delay, thereafter, the

¹ LAWS (MPH) 1989 8 10

application under Order 22 Rule 9 CPC and Section 5 of the Limitation Act was filed on 4-9-2018 and that has been considered and granted by the appellate Court by the impugned order.

6. The suit was for declaration of title and permanent injunction. The appellate court has recorded sufficient and valid reasons to condone the delay and to set aside the abatement.
7. The Supreme Court in the matter of **Banwari Lal v. Balbir Singh**² has held that the provisions of Order 22 of the CPC are not penal in nature. It is a rule of procedure. It was held 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*³, 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 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 Court⁴ 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

2 2016(1) SCC 607

3 5 (2003) 3 SCC 272

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

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 scuttled 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)

10. In *Sital Prasad Saxena v. Union of India*⁵, it was observed that the rules of procedure under Order 22 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. Procedure is meant only to facilitate the administration of justice and not to defeat the same. The dismissal of the second appeal by the High Court does not constitute a sound and reasonable exercise of its powers and the impugned order⁶ cannot be sustained.

- 8.** In light of the principle of law laid down by the Supreme Court in the above-stated judgment (supra) and considering the reasons assigned by the First Appellate Court, order passed granting application under Order 22 Rule 9 CPC and Section 5 of the Limitation Act, 1963 is strictly in accordance with law. I do not find any illegality or perversity in the impugned order. The writ petition deserves to be and accordingly dismissed, leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

⁵ (1985) 1 SCC 163

⁶ *Banwari Lal v. Balbir Singh*, 2013 SCC OnLine Del 6406