

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**FIRST APPEAL No.161 of 1999**

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1. Ram Balak Prasad Sah
2. Ram Babu Prasad Sah alias Ram Babu Sah
3. Chandra Kumar Sah

All sons of Late Lakshmi Narayan Sah, residents of village Rampur  
Dudhpura, Police Station and District-Samastipur.

... .. Defendants-Appellants

Versus

1(i) Lakshmi Narayan Gupta S/o Late Dwarika Lal, R/o village-Mathurapur,  
P.S. Waris Nagar, District Samastipur.

1(ii) Ganga Prasad Gupta

1(iii) Ratan Kumar

1(iv) Ashok Kumar

All sons of Late Dwarika Lal, Residents of village-Kalasthan  
Dalsingsarai, Ward no.2, Police Station-Dalsingsarai, District-Samastipur.

1(v) Indradeo Gupta son of Late Dwarika Lal, Resident of village-Marwari  
Bazar, Samastipur (Ward no.5), Town, Police Station and District-Samastipur

1(vi) Smt. Sumitra Devi, wife of Harish Chandra Prasad, resident of  
Dharamshala Road, Jogbani, Police Station-Jogbani, District-Araria.

... .. Plaintiffs-Respondents

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**Appearance :**

|                      |   |                                                                                                          |
|----------------------|---|----------------------------------------------------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Shri Nandan Prasad Singh, Sr. Adv.<br>Mr. Rajeev Ranjan, Adv.<br>Mr. Prashant Vedasen, Adv.          |
| For the Respondent/s | : | Mr. J.S. Arora, Sr. Adv.<br>Mr. Manoj Kumar, Adv.<br>Mr. Sreejan Pankaj, Adv.<br>Mr. Aditya Sharan, Adv. |

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**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY**  
**ORAL JUDGMENT**

**Date : 23-09-2022**

**I.A. no.5153 of 2013 (renumbered as I.A. no.3 of 2013), I.A. no.5821 of 2017, I.A. no.6844 of 2017 (renumbered as I.A. no.5 of 2017), I.A. no.6 of 2021, I.A. no.7 of 2021, I.A. no.8 of 2021 and I.A. no.9 of 2021**

Heard Mr. Shri Nandan Prasad Singh, learned Senior  
counsel appearing for the appellants and Mr. J.S. Arora, learned  
Senior counsel appearing for the respondents on the above  
applications.

I.A. no.5153 of 2013 was filed on 30.7.2013 on behalf



of respondent nos.1(i), 1(ii) and 1(iv) praying that an order be passed regarding abatement of the appeal due to non-substitution of the legal heirs and representatives of respondent no.1(i) Lakshmi Narayan Gupta, respondent no.1(iv) Ashok Kumar and respondent no.1(vi) Sumitra Devi. It was stated therein that respondent no.1(i) died on 30.1.2001, respondent no.1(iv) died on 31.10.2011 and respondent no.1(vi) died on 18.2.2012. More than 90 days having passed since their deaths and the appellants not having taken steps for substitution of the said respondents by their legal representatives, it was prayed that appropriate orders be passed that the appeal had abated as against the deceased respondents and appeal itself had become incompetent.

I.A. no.5821 of 2017 has been filed on behalf of the appellants under Order XXII Rule 4 read with Rule 9 of the Code of Civil Procedure and section 5 of the Limitation Act praying therein for substituting the heirs of respondent no.1(iv) Ashok Kumar on account of his death after setting aside abatement and condoning the delay in filing of the substitution petition.

I.A. no.6844 of 2017 was filed on behalf of the respondent no.1(ii) Ganga Prasad Gupta on 14.9.2017 praying



therein to dismiss the appeal by holding that the same had abated on account of non-substitution of legal representatives of respondent no.1(vi) Sumitra Devi who died on 18.2.2012.

I.A. no.7 of 2021 has been filed on behalf of appellant no.3 on 17.2.2021 under Order XXII Rule 1 and 2 read with Rule 9 of the Code of Civil Procedure praying therein for substitution of the heirs of appellant no.1 and appellant no.2 on account of their death after setting aside the abatement. Further, I.A. no.6 of 2021 has been filed for condonation of delay in filing of the substitution petition for substitution of appellant nos.1 and 2.

I.A. no.8 of 2021 has been filed on behalf of the appellant no.3 on 26.3.2021 under Order XXII Rule 3 and 4 read with Rule 9 of the Code of Civil Procedure praying therein for substitution of the heirs of respondent no.1(i) Lakshmi Narayan Gupta and respondent no.1(vi) Smt. Sumitra Devi on account of their death. Further, I.A. no.9 of 2021 has been filed under section 5 of the Limitation Act for condoning the delay in filing of the substitution petition filed for substitution of heirs of respondent no.1(i) and respondent no.1(vi).

**I.A. no.5821 of 2017**

The instant application under Order XXII Rule 4 read



with Rule 9 of the Code of Civil Procedure and section 5 of the Limitation Act has been filed on behalf of the appellants praying for substitution of the heirs of respondent no.1(iv) Ashok Kumar after setting aside the abatement and condoning the delay in filing of the substitution petition.

It is submitted by learned Senior counsel appearing for the appellants that the instant appeal arising out of the suit for specific performance of contract was preferred against the sole respondent Pavitri Devi. On the death of Pawitri Devi, by order dated 17.4.2013, the heirs of Pawitri Devi including respondent no.1(iv) Ashok Kumar were substituted in her place. On appeal notice being issued, in the service report, he was reported to be dead. In view of the service report, by order dated 17.9.2014, the learned Joint Registrar allowed time for filing substitution petition for substitution of the heirs of Ashok Kumar. It is submitted by learned counsel for the appellants that the appellant no.2 who had been doing pairvi in the case was informed by his counsel for taking steps for filing of substitution petition. However, the appellant no.2 being a simple person who used to reside in the village doing cultivation work did not take steps being under the impression that since his other brothers were already on record in the case, there was no necessity to



bring the heirs of the deceased Ashok Kumar on record. It was under this bonafide impression that the appellant no.2 did not take steps. Later the appeal was placed under the heading for orders on office notes on 28.7.2017 before a learned Single Judge who by his order dated 28.7.2017 granted two weeks time for filing the substitution petition for substitution of respondent no.1(iv), besides others. It is submitted by learned counsel for the appellants that the counsel for the appellants once again informed the appellant no.2 that in case the order is not complied with, the appeal may be dismissed. Thereafter understanding that it was necessary to file a substitution petition for substituting the deceased respondent no.1(iv) that the appellants filed the instant application for substitution.

It is submitted by learned Senior counsel appearing for the appellants that the respondent no.1(iv) who died sometime in March 2013 could not be substituted on account of the reasons given in detail in the interlocutory application and also for the reason that the then lawyer who was conducting the case on behalf of the appellants could not contact his client and for the said purpose, learned counsel refers to the order no.20 dated 5.12.2017 passed in the instant appeal wherein submission of the then learned counsel for the appellants is recorded to the



effect that no instruction is being given to him by the appellants. Further, it is submitted by learned Senior counsel that procedural laws are meant for furtherance of justice and thus the question of abatement and limitation etc. should be liberally construed. In support of his submissions learned Senior counsel for the appellants relies on the judgment in the case of Lal Keshri Devi and others vs. Smt. Duleshwari Devi [2009(3) PLJR 28], Sardar Amarjit Singh Kalra vs. Pramod Gupta and others [(2003)3 SCC 272] and Banwari Lal vs. Balbir Singh [(2016)1 SCC 607]. Relying on the above judgments, it is submitted by learned Senior counsel for the appellants that procedure under Order XXII of the Code of Civil Procedure should be liberally construed so as to serve as handmaid of justice. It should be construed as a flexible tool of convenience with a view to rule effective and substantial justice. Further, in case sufficient cause is shown for the delay in bringing the legal representatives of the deceased party on record, the same should be condoned as the procedure is meant only to facilitate the administration of justice and not to defeat the same. It is thus prayed that the delay in filing of the substitution petition for substitution of the deceased respondent no.1(iv) Ashok Kumar be condoned and the heirs mentioned in paragraph no.16 be



substituted after setting aside the abatement.

The prayer made in the application was opposed by Mr. J.S. Arora, learned Senior counsel appearing for the respondents. At the outset, it is submitted by learned Senior counsel for the respondents that from perusal of the records it would transpire that it was on 17.9.2014 itself that time was granted to the appellants for substitution of the deceased respondent no.1(iv). Referring to paragraph nos.5 and 6 of I.A. no.5821 of 2017 it is submitted that the appellants have admitted about the service report on appeal notice issued to respondent no.1(iv) being to the effect that respondent no.1(iv) was dead. No explanation whatsoever has been given for delay in filing of the substitution petition. Further, in paragraph no.7 of the application, the appellants further admit of the learned counsel having informed him. Thus, there is no basis for submission made on behalf of the appellants that the appellants were ignorant about the death of respondent no.1(iv) or that he was not in contact with his counsel. It is submitted that liberal approach in condoning the delay may only be taken if the action of the appellants was not negligent but was bonafide and they were prevented by sufficient and reasonable cause from filing a substitution petition. The same not being the case in the instant



appeal/application, it is prayed that the application be rejected. Learned Senior counsel for the respondents in support of his contention relied on the judgment in the case of Esha Bhattacharjee vs. Raghunathpur Nafar Academy [(2013)12 SCC 649] and in the case of Shanti Devi and others vs. Kaushaliya Devi [(2016)16 SCC 565].

Heard learned counsels for the appellants and respondents.

The instant application has been filed by the appellants for substitution of the respondent no.1(iv) Ashok Kumar who died on 31.10.2011 by his legal heirs mentioned in paragraph no.16 of the application.

From the contents of the application, it is the case of the appellants that respondent no.1(iv) died sometime in March, 2013 leaving behind his wife and four sons. He could not be substituted in time for the reason that the appellant no.2 Ram Babu Sah who was doing pairvi in the case was a simple person living in the village doing his cultivation work. He was under the impression that the brothers of respondent no.1(iv) being on record, there was no necessity for respondent no.1(iv) to be substituted and thus he did not take steps.

On perusal of the records of the case, it transpires



that it was on 30.7.2013 itself that an application (I.A. no.5153 of 2013) was filed duly sworn by respondent no.1(v) Indradeo Gupta to the effect that respondent no.1(i) Lakshmi Narayan Gupta, respondent no.1(iv) Ashok Kumar and respondent no.1(vi) Sumitra Devi had died on 30.1.2001, 31.10.2011 and 18.2.2012 and not having been substituted, appropriate orders be passed that the appeal had abated against the deceased respondents and in consequence thereof the appeal having become incompetent, the same be dismissed. By order dated 17.4.2013, the sole respondent had been substituted and appeal notices had been issued to the newly substituted legal heirs of the deceased sole respondent which included the respondent no.1(iv) Ashok Kumar. A report was received and the appeal was put up before the learned Joint Registrar (Judicial) with the office note dated 9.9.2014 to the effect that the notices issued on respondent no.1(iv) Ashok Kumar remain undelivered as he was reported to be dead. Thus by order dated 17.9.2014, the learned Joint Registrar (Judicial), on prayer of learned counsel for the appellants, granted time to the appellants to file substitution petition with respect to deceased respondent no.1(iv) subject to law of limitation. The substitution petition not having been filed, the records show that once again by order dated 28.7.2017, as



prayed by learned counsel for the appellants time was granted for filing substitution petition for deceased respondent no.1(iv). The instant substitution petition was ultimately filed on 10.8.2017 ie after a delay of more than 5 years 9 months after the death of respondent no.1(iv) and more than 2 years 10 months since time was granted for filing the substitution petition by the learned Joint Registrar (Judicial) on the prayer made by the learned counsel for the appellants himself.

So far as the appellant no.2 doing pairvi in the appeal is concerned, it would be relevant to reproduce paragraph nos.6, 7, 13 and 14 of the above application (I.A. no.5821 of 2017) which are as follows:

*“6. that in view of such service report, by order dated 17.9.2004, the Joint Registrar allowed time for filing substitution petition for substituting the heirs of Ashok Kumar and for that he allowed time one week after Puja Holidays for filing substitution petition.*

*7. that Ram Babu Sah, the appellant no.2 of the case, who had been doing pairvi in the case, was informed by his counsel for taking steps for filing substitution petition.*

*13. that it may be stated that the above appeal was placed under heading office notes on 28.7.2017 before Hon'ble Mr. Justice Jitendra Mohan Sharma, with note that inspite of order dated 17.9.2014*



*passed in the case, no step has been taken for filing substitution petition with respect to respondent no.1(iv) and his Lordships was pleased to allow two weeks time for taking steps for filing substitution petition.*

*14. that the counsel for appellant informed about the said order passed by Hon'ble Judge to appellant no.2 and warned him that if the said order is not complied with, his appeal may be dismissed."*

It may be stated here itself that the date of the order of the Joint Registrar stated in paragraph no.6 quoted above has been incorrectly stated as 17.9.2004 in place of the correct 17.9.2014.

Thus, from reading of the portion of the petition quoted above, it would clearly be evident that the appellant no.2 who was doing pairvi in the case was in regular touch with his counsel till the year 2017, as it transpires from paragraph no.14 quoted above.

Another submission made by learned Senior counsel appearing for the appellants was to the effect that the then learned counsel for the appellants was not in contact with the appellant no.2 and for the same, reference was made to order no.20 dated 5.12.2017. With respect to this contention, it may be stated here that the instant application (I.A. no.5821 of 2017) had been filed by the appellants for substitution of the deceased



respondent no.1(iv) Ashok Kumar several months prior to the above order dated 5.12.2017 ie on 10.8.2017 itself.

So far as the judgment of the Division Bench of this Court in the case of Lal Keshri Devi (supra) is concerned, in the opinion of this Court the same has no application to the facts of this case. In the case of Sardar Amarjit Singh Kalra (supra), the Hon'ble Supreme Court has held that in case of death of some of the appellants during pendency of the appeal, the application for bringing the legal representatives on record even if filed belatedly should be liberally considered. In the case of Banwari Lal (supra), the Hon'ble Supreme Court proceeded to hold that on sufficient cause being shown the delay in bringing the legal representatives of the deceased party on record should be condoned for the reason that procedure is meant only to facilitate the administration of justice and not to defeat the same.

So far as the facts of the instant case is concerned, it can clearly be seen not only from the ordersheet but also from the contents of the instant application that the appellant no.2 was doing continuous pairvi in the case, was in contact with the conducting counsel, the Court repeatedly granted time to learned counsel for the appellants to file a substitution petition



which was communicated to the appellants by their counsel, however still the appellants chose not to file the substitution petition and which was ultimately filed after a delay of 5 years 9 months.

It may be mentioned here that the statement made by the respondents in I.A. no.5153 of 2013 to the effect that respondent no.1(iv) Ashok Kumar died on 31.10.2011 has not been disputed by the appellants and the only statement with respect to the death of respondent no.1(iv) made on behalf of the appellants in I.A. no.5821 of 2017 is to the effect that the respondent no.1(iv) died sometime in the month of March, 2013.

The Hon'ble Supreme Court in the case of Esha Bhattacharjee (supra) has held as follows:

*“21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

*21.10. (x) If the explanation offered is concocted or the grounds urged in the*



*application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

*21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

*22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -*

*22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

*22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

*22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

*22.4. (d) The increasing tendency to perceive*



*delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”*

Further the Hon’ble Supreme Court in the case of Shanti Devi (supra) has held as follows:

*“9. Before further discussion, we think it just and proper to mention the relevant provisions applicable to the present case. Rule 3 of Order 22 of Code of Civil Procedure, 1908 (for short “CPC”) provides that where the plaintiff dies, and the right to sue survives, the Court, on an application made in that behalf shall cause legal representative of the deceased plaintiff to be made a party and shall proceed with the suit. Rule 11 of Order 22 provides that in the application of the Order to appeals word “plaintiff” shall be held to include “appellant”. Sub-rule (2) of Rule 3 of the Order provides that where within the time, limited by law, no application is made under sub-rule (1) the suit shall abate. So far as the limitation is concerned, [Article 120](#) of Schedule of Limitation Act, 1963 provides period of ninety days for moving substitution application. Sub-rule (3) of Rule 9 provides that, the provisions of [Section 5](#) of Limitation Act, shall apply to sub-rule (2), wherein a person claiming to be legal representative of the deceased plaintiff has a*



*right to apply for setting aside the abatement but was prevented by any sufficient cause from continuing the suit.*

Thus, from the contents of the petition, the materials on record together with the judgments relied on by the parties, the Court is of the opinion that the appellants have not made out a case for condonation of delay or that he was prevented by sufficient cause from filing an application for substitution, in time. As such, the prayer made in the instant application (I.A. no.5821 of 2017) is rejected and the appeal stands abated as against the deceased respondent no.1(iv) Ashok Kumar.

I.A. no.5821 of 2017 is dismissed.

**I.A. no.7 of 2021 and I.A. no.6 of 2021**

I.A. no.7 of 2021 has been filed under Order XXII Rule 1 and 2 read with Rule 9 of the Code of Civil Procedure on behalf of the appellant no.3 praying therein for substitution of the heirs of appellant no.1 Ram Balak Prasad Sah and appellant no.2 Ram Babu Sah on account of their deaths on 13.8.2020 and 22.12.2018 respectively. I.A. no.6 of 2021 has been filed for condoning the delay in filing of the substitution petition for substitution of appellant nos.1 and 2.

It is the case of the appellants that pairvi in the First Appeal used to be done by the appellant no.2 from the date of its



filing in the year 1999 till he fell ill in middle of the year 2017. He did not inform about the development in the appeal to his brothers who remained completely ignorant of the same. On death of appellant no.2 and thereafter the appellant no.1, the appellant no.3 who is a villager remained under the impression that there was no requirement of substitution. He had no knowledge about the development of the case and even any decree of specific performance of contract passed against them. All of a sudden, on some person coming to the land in question on 28.1.2021 and trying to take possession, the appellant no.3 learnt about the fact that not only the decree had been passed in the suit against them but the decree had already been executed in the execution proceeding. Thus, on coming to know about the development, the appellant no.3 rushed to Patna on 2.2.2021, contacted his lawyer and as advised, proceeded to file the substitution petition for substitution of the deceased appellant nos.1 and 2.

It is submitted by learned Senior counsel appearing for the respondents that the statements made in the two applications are not only incorrect but the appellants have not come to this Court with clean hands. It is submitted that I.A. no.10 of 2022 has been filed on behalf of the appellant no.3 on



14.2.2022 in the instant appeal wherein it has categorically been stated in paragraph no.9 of the said application that the appellant ie the appellant no.3 informed his counsel about the Title Execution Case no.3 of 1999 being pending at the stage of final hearing in the Court of learned Sub Judge I, Samastipur.

Heard learned counsels appearing for the parties.

In the application filed for substitution of the deceased appellant nos.1 and 2, the main contention of the appellant no.3 who has sworn the affidavit himself was to the effect that as the pairvi in the First Appeal was being done by the appellant no.2, the other brothers including the appellant no.3 had no knowledge and were completely ignorant about the development of the case. The appellant no.3 learnt about the development in the case only on 28.1.2021 when some persons came and tried to take possession of the land in question on which it transpired that not only a decree for specific performance of contract has been passed but the decree had already been executed in the execution proceeding. Paragraph nos.12, 13, 14, 15, 16 of the application (I.A. no.7 of 2021) are quoted herein below:

*“12. That the appellant no.1 Ram Balak Prasad Sah too died on 13.8.2020 and the appellant no.3 Chandra Kumar Sah a villager*



*remained under impression that since he is surviving appellant in the case, there was no requirement for substitutions of heirs of his two brothers.*

*13. That it may be stated that the heirs of the appellant no.1 and 2 had no knowledge too about the development of the case and even any decree of specific performance of contract passed against them.*

*14. That all of a sudden some persons came to the land in question and tried to take possession on 28.1.2021 which was objected and then the appellant no.3 and heirs of the others appellants were conveyed that a decree for specific performance of contract has surpassed in their favour and the said decree had already been executed in execution proceeding.*

*15. That the appellant no.3 and heir of the other appellants got shocked as they had no knowledge about development of the case as the appellant no.2 Ram Babu Sah alone used to do pairvi in the case.*

*16. That after coming to know about the development, the appellant no.3 Chandra Kumar Sah rushed to Patna on 2.2.2021 and contacted his lawyer and informed him that the appellant no.1 and 2 have already died.”*

It may be mentioned here that subsequent to the



above application (I.A. no.7 of 2021) which was sworn by the appellant no.3 on 12.2.2021, another interlocutory application (I.A. no.10 of 2022), also sworn by the appellant no.3 on 10.2.2022, was filed under section 151 of the Code of Civil Procedure. Paragraph nos.7, 8 and 9 of I.A. no.10 of 2022 are being quoted herein below:

*“7. That the appellant no.2 Ram Babu Sah died on 22.12.2018 and the appellant no.1 Ram Balak Prasad also died on 13.8.2020 and the appellant no.3 Chandra Kumar Sah a villager remained under impression that since he is surviving appellant in the case, there was no requirement for substitutions of heirs of his two brothers.*

*8. That the appellant no.3 Chandra Kumar Sah visited regularly at the office of learned counsel Mr. Prasant Vedasen for appropriate pairvi and compliance of the order of this Hon'ble Court but they did not so, at some times they latches to appearance at the time of calling this First Appeal.*

*9. That the appellant has informed to his counsel Mr. Prasant Vedasen that a T.S. Execution Case no.3/1999 is pending and at present on stage of final hearing in the Court of Learned Sub Judge 1<sup>st</sup>, Samastipur arising out of Title Suit no.77/1992 but he gave an excuse to the appellant since 2019 that he is at*



*Bangalore and not able to move in this case and also not able to give the no objection certificate for appointing other advocate in this appeal for proper pursuance of the proceeding.”*

From perusal of the two affidavits quoted herein above, both sworn by the appellant no.3 himself, it would transpire that in the affidavit sworn on 12.2.2021 (in I.A. no.7 of 2021), the appellant no.3 states that he was completely ignorant about the development in the case and only after the death of the appellant no.2 that he learnt about the decree having been executed in the execution case when some persons came to the land on 28.1.2021 to take possession. On the other hand, in the affidavit sworn on 10.2.2022 (in I.A. no.10 of 2022), the appellant no.3 states that he was regularly visiting the office of the learned counsel for appropriate pairvi and informed him about the pendency of the execution case at the stage of final hearing in the learned court below.

Thus, from the facts stated herein above, the contents of the application for substitution of the appellant nos.1 and 2 as also the petition for condonation of delay, the Court is of the opinion that not only the appellant has not made out a case for condonation of delay of more than six months in case of appellant no.1 and more than two years in case of appellant no.2



but is also of the opinion that he has not come to this Court with clean hands. Thus, in view of the materials on record as also in view of the law laid down by the Hon'ble Supreme Court in paragraph nos.21 and 22 in the case of Esha Bhattacharjee (supra), the Court is of the opinion that there is no merit in the applications.

I.A. no.7 of 2021 and I.A. no.6 of 2021, both stand dismissed.

**I.A. no.8 of 2021 and I.A. no.9 of 2021**

I.A. no.8 of 2021 has been filed under Order XXII Rule 3 and 4 read with Rule 9 of the Code of Civil Procedure on behalf of the appellant no.3 praying for substitution of respondent no.1(i) Lakshmi Narayan Gupta and respondent no.1(vi) Smt. Sumitra Devi on account of their deaths.

It is the case of the appellants that pairvi in the First Appeal on behalf of the appellants was being done by the appellant no.2 who unfortunately fell ill in the middle of the year 2017. It was only on a copy of the interlocutory application (I.A. no.6844 of 2017) being served on learned counsel for the appellants on 5.2.2017 that from the contents thereof information was received about the death of Lakshmi Narayan Gupta and Sumitra Devi. On account of his illness, the appellant



no.2 could not do proper pairvi in the case and he ultimately died on 22.12.2018. The other two appellants including the appellant no.3 was under the impression that no substitution was required. The appellant no.1 also died on 13.8.2020. The appellants had no knowledge about the development in the case or about the decree of specific performance of contract. It was only on 28.1.2021 on some persons coming to take possession of the land in question that the appellant no.3 learnt about the passing of the decree for specific performance of contract and the same having been executed in the execution proceeding. It is then that the appellant no.3 rushed to Patna on 2.2.2021, contacted his lawyer and as advised, proceeded to file the substitution petition.

Without going into the details of the merits of the case of the appellants in the instant application, it may be stated here that the recital made in the instant application ie I.A. no.8 of 2021 filed for substitution of respondent nos.1(i) and 1(vi) are identical to the recital made in the application (I.A. no.7 of 2021) filed for substitution of appellant nos.1 and 2.

Further, the statements made in the instant I.A. no.8 of 2021 which is sworn by the appellant no.3 on 25.3.2021 is not consistent with the statement made in paragraph nos.7 to 9



quoted above of I.A. no.10 of 2022 sworn on 10.2.2022 by the appellant no.3 himself.

Thus, the Court being of the opinion that the appellants have not given any reasonable explanation for the delay in filing of the substitution petition for substitution of respondent nos.1(i) and 1(vi) together with the ratio of the judgment of the Hon’ble Supreme Court in the case of Esha Bhattacharjee (supra), the Court finds no merit in the two applications.

I.A. no.8 of 2021 and I.A. no.9 of 2021 stand dismissed.

The above applications having been dismissed, the appeal stands abated as against appellant no.1 Ram Balak Prasad Sah, appellant no.2 Ram Babu Prasad Sah, respondent no.1(i) Lakshmi Narayan Gupta, respondent no.1(iv) Ashok Kumar and respondent no.1(vi) Smt. Sumitra Devi. Consequently, the appeal itself has become incompetent.

The appeal is dismissed.

**(Partha Sarthy, J)**

Saurabh/-

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