

IN THE HIGH COURT OF ORISSA AT CUTTACK
MA No.347 of 2001

***Gobinda Kanhar (since dead) through
his LRs and Others*** ***Appellants***

Mr. S.D. Das, Sr. Advocate

-versus-

***Biranchi Behera (since dead) through
his LRs*** ***Respondents***

Mr. P.K. Swain, counsel for Respondents

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
5.12.2022

Order No.

14. 1. The matter is taken up through hybrid mode.
2. Heard Mr. S.D. Das, learned senior counsel for the Appellants and Mr. P.K. Swain, learned counsel for the Respondents.
3. Present appeal is directed against impugned order dated 24th February, 2001 of the learned District Judge, Phulbani passed in MJC No.16 of 1999.
4. Three appellants, namely Balaram Konhar, Govinda Konhar and Pirasa Konhar filed Title Appeal No.5 of 1996 challenging decree dated 2nd March, 1996 passed in Title Suit No.27 of 1992. During pendency of the appeal, Pirasa died issueless on 17th December, 1996 and Balaram died on 24th April, 1997. Thereafter the appeal was dismissed for default on 13th January, 1998. On 13th July, 1999 the sons of Balaram, namely Prafulla and Manoj (present Appellants 2 & 3) filed a petition under Order 41, Rule 19 C.P.C. and subsequently on

27th January, 2000 they filed two petitions under Order 22, Rule 3 and 11 C.P.C. for substitution of LRs of Balaram along with a petition under Section 5 of the Limitation Act. On 7th August, 2000 another petition was filed praying to condone the delay in filing the petitions under Order 22, Rule 3 and 11 Cr.P.C.

5. The District Judge in the impugned order rejected the prayer for re-admission of the appeal under Order 41, Rule 19 on the ground that since Gobinda, one of the Appellant is still alive, who did not take any steps either for restoration of the appeal or for substitution of Balaram upon his death, the sons of Balaram have no right to pursue the appeal by restoring the same under Order 41, Rule 19 C.P.C.

6. It is seen that Balaram and Gobinda are two brothers who pursued the appeal jointly along with Pirasa against the impugned decree. Pirasa is issueless. But Balaram has two sons, namely Prafulla and Majoj. It is true that Balaram died prior to dismissal of the appeal by the District Judge and subsequently the sons of Balaram presented a petition for re-admission of the appeal. Their plea before the District Judge was that, they were unaware of pendency of the appeal before the District Judge and since they came to know about this after the death of their father (Balaram), they presented the petition under Order 41, Rule 19. But the learned District Judge has opined that since Prafulla and Manoj were not brought on record by Gobinda before dismissal of the appeal, they do not have any right to pursue the case and the petition for readmission of the appeal at their instance is not maintainable.

7. It is true that Balaram and Gobinda have filed the appeal jointly. But that does not mean that right to sue remains with Govinda

only after death of Balaram and if Gobinda did not want to pursue the appeal, the LRs of Balaram will also lose his right to pursue the appeal. When the sons of Balaram, after his death, say that they are interested for pursuing the appeal on behalf of their father, the right to sue continues with them and they cannot be denied for the mere reason that Gobinda did not take steps to bring them on record. Of course, the question of limitation to admit the petition under Order 41, Rule 19 is altogether different from the question regarding right of the LRs to pursue the appeal. However, the District Judge has not opined anything regarding limitation but has rejected the petition under Order 41, Rule 19 only on the ground that the same at the instance of the LRs of Balaram is not maintainable. This approach of the District Judge is illegal and unjustified, and accordingly set aside. Since in the meantime around 24 years have been passed, the limitation in filing the petition under Order 41, Rule 19 by Prafulla and Manoj is also condoned in the interest of justice. Further there being no dispute raised by the present Respondents with regard to their eligibility as the legal representatives of Balaram, being his sons, their prayer for substitution in place of Balaram is also allowed.

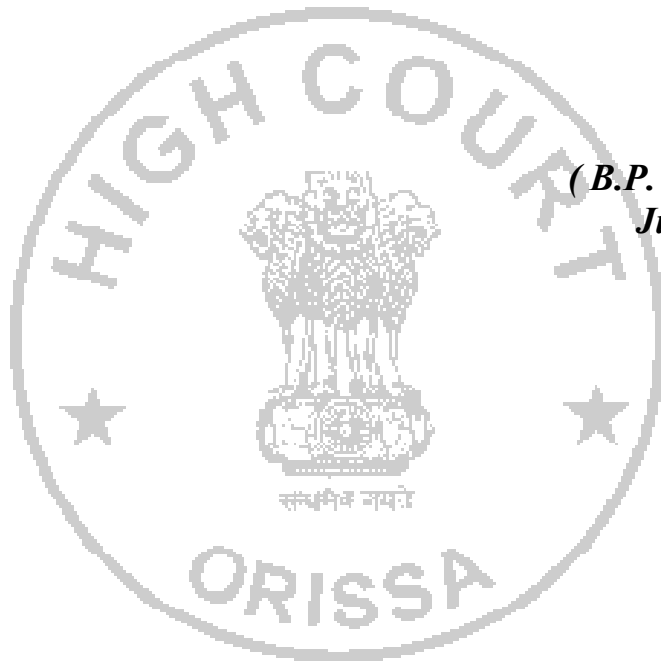
8. In the result Title Appeal No.5 of 1996 is restored on the file of the District Judge, Phulbani and keeping in view the gap of such a long period in between, it is imperative that the appeal should be decided without further delay.

9. Accordingly present appeal is allowed and Title Appeal No.5 of 1996 is restored on the file of the District Judge, Phulbani and the prayer for substitution of Balaram is allowed. The parties present before this court, who are LRs of Balaram and Gobinda (Appellants)

and the LR's of Biranchi (Respondents), are directed to appear before the learned District Judge, Phulbani on 4th January, 2023 along with certified copy of this order. The learned District Judge shall do well to dispose of the Title Appeal No.5 of 1996 within a period of 4 months there-from. The parties present before this court are directed to cooperate for disposal of the title appeal before the District Judge within the time stipulated.

10. An urgent certified copy of this order be issued as per rules.

M.K.Panda



(B.P. Routray)
Judge