

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.68 of 2006

A. Venkat Ramanama & Others* *Appellants
Mr.B. Mishra, Advocate

-versus-

Vonteddu Nagayya & Others* *Respondents
Mr. D.R. Bhokta, Advocate (R.3 & 4)
Mr. S. K. Das, Advocate (R.2 & 5)

CORAM:
MR. JUSTICE D.DASH

ORDER
08.12.2022

Order No.

I.A. Nos.1062,1063 & 1064 of 2022

10. 1. This matter is taken up through hybrid arrangement (virtual/physical mode).
2. The Appellants, by filing these applications have prayed for substitution of the legal representatives of Respondent No.1 (Plaintiff No.1) by setting aside the abatement and condoning the delay.
3. Heard.
4. Keeping in view the submissions made and on going through the averments taken in the applications; it is seen that the Respondent No.1 (Plaintiff No.1) has died on 13.05.2012 leaving behind his widow as his legal representative. It is stated that only when these Appellants (Defendants) received notice in Execution Proceeding No.1 of 2003, from the execution petition, they came to know the factum of death of Respondent No.1 (Plaintiff No.1) and thereafter, ascertaining the name of the legal representative of the Respondent No.1 (Plaintiff No.1), steps have been taken. It is further stated that the notice was received in that Execution Proceeding in the month of August, 2022 (no date is indicated).

5. A careful reading being given to the averments taken in the Applications; it reveals that the Appellants thereunder want to convey as if it was the duty of the Respondents (Plaintiffs) or the legal representative of the deceased Respondent No.1 (Plaintiff No.1) to inform the Appellants (Defendants) regarding the death of Respondent No.1 (Plaintiff No.1) so as to enable the Appellants (Defendants) to take steps in that regard in this Appeal for pursuing the same.

Record shows that Execution Proceeding being pursued by the Respondents (Decree Holders-Plaintiffs); in Misc. Case No.1676 of 2006 on the prayer of these Appellants (Defendants), this Court had been pleased to stay its further proceeding. Here the death of the Respondent No.1 having taken place on 13.05.2012; these applications have been filed on 18.10.2022 which is more than ten years after abatement of this Appeal as against the Respondent No.1 (Plaintiff No.1). The averments do not reveal as to what were the sufficient causes which prevented these Appellants (Defendants) from taking step for substitution in time. The sufficient cause for them is that they had no knowledge till they received the notice in the Execution Proceeding which per se is not believable as also legally acceptable as the Appellants (Defendants) are under legal obligation to take step in time and date of knowledge is not the starting period of limitation. In the given case, the delay is for more than ten years and a valuable right has accrued in favour of the legal representative of the Respondent No.1 as the decree in her hand is final and executable at her instance. The inaction of the Appellants (Defendants) being found to be without any acceptable explanation, this Court is not in a position to say that the Appellants (Defendants) had been prevented by sufficient cause for all these ten years.

6. In view of all these above, this Court is not inclined to accept the prayers advanced in the Applications to allow substitution of the Respondent No.1 by setting aside abatement and condoning such long period of delay.

7. The Applications are accordingly dismissed.

(D. Dash)
Judge

ORDER

08.12.2022

R.S.A. No.68 of 2006

Order No.

11. 1. In view of above order in I.A. Nos.1062, 1063 & 1064 of 2022, this Appeal has abated as against the Respondent No.1 (Plaintiff No.1) w.e.f. 13.05.2012.
2. The Respondents as the Plaintiffs had filed the suit and they having obtained the decree, the First Appeal filed by these Appellants (Defendants) has been dismissed. The Appellants (Defendants) were directed to vacate the suit house and give vacant possession of the same to the Respondents (Plaintiffs). In view of the abatement of this Appeal as against the Respondent No.1 (Plaintiff No.1), the judgments and decrees have attained the finality in so far as the legal representative of Respondent No.1 (Plaintiff No.1) is concerned is very well executable at her instance and the decree is indivisible.
3. For the aforesaid, for the abatement of the Appeal as against Respondent No.1 (Plaintiff No.1), this appeal abates in entirety as it cannot proceed as against the remaining Respondents (Plaintiffs) for the very nature of the decree.

(D. Dash)
Judge