

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.235 of 1999

Mahendra Prasad Mallik & Others* *Appellants
Mr.M. Mohanty, Advocate

-versus-

Harekrushna Das & Others* *Respondents
Mr. D. Mohapatra,
Advocate

CORAM:

MR. JUSTICE D.DASH

ORDER

19.09.2022

(A) I.A. Nos.19,20 & 21 OF 2019

(B) I.A.Nos.161,162 & 163 OF 2022

17. 1. This matter is taken up through hybrid arrangement (virtual/physical mode).
2. The three applications giving rise to the I.As. as at (A) have been filed for substitution of the legal representatives of deceased Respondent No.1 by setting aside abatement and condoning the delay in filing the Appeal.
2. This Second Appeal challenging the judgment and decree passed by the Courts below has been filed on 19.07.1999. During pendency of this Appeal, Respondent No.1, who is the Plaintiff No.1 before the Trial Court and Respondent No.1 before the First Appellate Court died on 14.04.2005. The above applications have come to be filed on 28.01.2019.
3. Learned counsel for the Appellants submits that the Appellants had no knowledge with regard to the death of Respondent No.1 and only on 15.12.2018 being so informed by

the learned counsel appearing for the Respondent No.2 as regards the death of the Respondent No.1, the Appellant No.1 was contacted by his Counsel and then he collecting of all required informations filed these applications. He submits that the delay in not filing the application for substitution and the delay in filing the Application for setting aside the abatement of the Appeal as against the Respondent No.1 was not deliberate and intentional.

He further submits that in the meantime the proposed legal representatives of Respondent No.1, i.e., Respondent No.1(a),1(b) and 1(c) having died; prayer for substitution of their legal representatives by setting aside the abatement and condoning the delay have been advanced by filing the Applications giving rise to the I.As. as at 'B'. He thus urges for substitution of all those legal representatives of Respondent No.1.

4. Learned counsel for the surviving PLRs of Respondent No.1 and Respondent No.2 submits that the explanation given by the Appellants for such long delay of more than 13 (thirteen years) are not at all satisfactory. He submits that it is not the date of knowledge, which is material for the purpose and from the actual date of death of the party, the time period runs for filing the Applications for substitution of the legal representatives. He further submits that here the Appellants and the Respondent No.1 are co-villagers and, therefore, it is even not acceptable for a moment that the Appellants were not aware about the death of the Respondent No.1, who is one of the suiters. He further submits that in view of such long lapse of time for such gross inaction on the part of the Appellants when valuable right has accrued in favour of the legal representatives of Respondent No.1; with such

vague explanation, this Court should not entertain the Applications for substitution of the legal representatives of Respondent No.1, setting aside the abatement and condonation of the delay in filing the Application for setting aside the abatement. According to him, in the facts and circumstances, it is not permissible to say that the Appellants were prevented by sufficient cause for all these periods in not filing the Applications.

5. Keeping in view the submissions made, the averments taken in the applications as well as the objections filed being gone through, it is seen that here the delay is for a period of 13 years 4 months and few days. The explanation is quite causal that as if the Appellants had no duty in the matter and it was for the legal representatives of Respondent No.1 to run to the Appellants with a request that they be substituted in place of deceased Respondent No.1 for continuance of this Appeal. Nothing is stated as to what were the causes much less to say as to how those sufficiently stood on the way in preventing the Appellants from filing these Applications after 13 long years.

6. In view of all the aforesaid, this Court is not in a position to say that the Appellants were prevented by sufficient cause in filing the above Applications.

7. Accordingly, the Applications as at 'A' stand rejected.

In view of the rejection of the Applications under (A); the Applications under (B) do not survive for consideration and are accordingly rejected.

(D. Dash)
Judge.

ORDER
19.09.2022

Order No.

S.A. No.235 of 1999

18. 1. The Appeal has abated as against the Respondent No.1 since long. The Respondent No.1 was the Plaintiff No.1 before the Trial Court. The State of Orissa as well as the Tahasildar, Basudevpur having filed the First Appeal; the deceased Respondent No.1 had been arraigned as Respondent No.1 therein. The present Appellants even though were not parties to the suit have later on come to the picture in the First Appeal as Respondent Nos.6,7 and 8. The suit was for declaration of right, title, interest and confirmation of possession of the Respondent Nos.1 and 2 (Plaintiffs) with the prayer in the alternative for recovery of possession as well as for injunction, demarcation and declaration that the record of right concerning the suit land in the major settlement is wrong.

The suit having been decreed, the present Appellants had not carried any Appeal and in the Appeal, which has been filed by the State of Orissa and Tahasildar, they stood arraigned as parties. Their contention being taken into consideration had been rejected therein. Now in view of the abatement of this Appeal as against the Respondent No.1 (Plaintiff No.1), the said judgment and decree passed by the Courts below have attained finality insofar as his legal representatives are concerned. It may be stated that here that Respondent No.2 is one of the legal representative of Respondent No.1 and, therefore, when he with the Appellant No.1 were the joint Plaintiffs, presence of this Respondent No.2 is not

enough to say that estate of Respondent No.1 is fully represented by him. Therefore, this Appeal cannot further proceed to answer the substantial question of law in the absence of all the legal representatives of Respondent No.1 (Plaintiff).

2. For the aforesaid, the present Appeal stands dismissed as to have abated in entirety. No order as to cost.

(D. Dash)
Judge

