

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**RVWPET No. 293 of 2020**

***Goura Chandra Behera and others*** ....

***Petitioners***  
*Mr. M. Mohanty, Advocate*

***-versus-***

***State of Odisha and another*** ....

***Opposite Parties***  
*Mr. P.K. Rout, AGA*

**CORAM:  
JUSTICE A.K.MOHAPATRA**

**ORDER**  
**07.12.2022**

**Order No.**

04. 1. Heard Mr. M. Mohanty, learned counsel appearing for the review Petitioner and P.K. Rout, learned Additional Government Advocate appearing for the State-Opposite Parties.
2. The present review petition has been preferred by the legal heirs of the plaintiff-appellant in the Second Appeal No.219 of 1990.
3. By filing this review petition under Order 47 Rule 1 of the C.P.C. read with Section 114 of C.P.C. 1908, the learned counsel for the Petitioner seeks review of the judgment and decree dated 20.11.2017 passed by a coordinate Bench of this Court in Second Appeal No.219 of 1990.
4. At the outset, Mr. Mohanty, learned counsel for the Petitioner submits that the present Petitioners are the legal heirs of

the deceased appellant in Second Appeal No.219 of 1990 which was disposed of on 20.11.2017. He further submits that the appellant in the above noted second appeal died on 15.6.1996 i.e. during the pendency of the second appeal. Since the second appeal was heard and disposed of without considering the case of the appellant, the present Petitioners, who are legal heirs of the appellant being aggrieved by the judgment and decree passed by this Court in the above noted second appeal have preferred an interlocutory application seeking leave to be impleaded as appellants in place of deceased appellant in the second appeal. Therefore, this Court deems it proper to take I.A. Nos.558 and 559 of 2020 before passing order on the merit in the review petition.

**I.A. No.559 of 2020**

5. This is application filed by the Petitioner under Section 5 of the Limitation Act for condonation of delay in filing the review petition.

6. It is submitted by the learned counsel for the Petitioners that since the sole appellant has died on 15.6.1996, the present Petitioners, who are legal heirs of the deceased appellant in the above noted second appeal. Further, when the judgment and decree that was passed by a coordinate Bench of this Court in the above

noted second appeal came to the knowledge of the Petitioners recently and, therefore, they have approached this Court by filing an application seeking leave to contest the second appeal filed by the deceased sole appellant along with this limitation petition to condone the delay in filing the review petition.

7. It is submitted by Mr. Mohanty, learned counsel for the Petitioners that after the judgment and decree was passed in the above noted second appeal, the same was communicated to the Petitioners by their advocate in the trial court on 18.02.2020. Thereafter, they came to know about the pendency of the second appeal filed by their predecessor and that fact regarding disposal of the same in the absence of such predecessor and while he was already dead. Accordingly, they have filed this application on 14.9.2020 with a prayer to condone the delay in filing the review petition, i.e. by counting limitation from the date of their knowledge, i.e. 18.2.2020.

8. Learned counsel for the State, on the other hand, opposes this application on the ground that there is huge delay in filing the review petition. He further submits that on his own submission, learned counsel for the Petitioners says that the sole deceased Appellant died on 15.6.1996, but they have approached this Court on

14.09.2020 to implead the Petitioners in place of deceased appellant in the above noted second appeal.

9. However, considering the fact that filing and pendency of the above noted second appeal before this Court was not within the knowledge of the Petitioners and they came to know about the same only on 18.02.2020 when the same was communicated to them by the lawyer, it cannot be said that delay in filing the review petition was intentional and deliberate and there is ample reason to believe that the pendency of the above noted second appeal was within the knowledge of the Petitioners, particularly when no material was produced before this Court to establish the fact that the filing of the appeal was within the knowledge of the Petitioners.

10. Considering the aforesaid facts, this Court thinks it proper to condone the delay in filing the review petition seeking leave to continue the above noted second appeal in place of the deceased appellant.

11. Accordingly, the I.A. is allowed.

**I.A. No.558 of 2020**

12. This interlocutory application is filed by the legal heirs of the deceased sole appellant, namely, Prahallad Behera in the above noted second appeal.

13. It is submitted by the learned counsel for the Petitioners that he has annexed the death certificate of the deceased appellant in the above noted second appeal which reveals the said Prahallad Behera has died on 15.6.1996 and the death certificate issued by the Registrar, Births & Deaths & Medical Officer, C.H.C. Baapada is annexed to this application.

14. However, learned counsel for the Petitioners has not filed the legal heir certificate of the deceased appellant instead he has given the family genealogy of the deceased appellant which reveals that the Petitioners are related to the deceased sole appellant Prahallad Behera. Therefore, he submits that the Petitioners are sufficient right in the subject matter to dispute and after the death of the sole deceased appellant they should have been heard in the matter before passing the final order in the second appeal thereby dismissing the appeal in their absence.

15. Learned counsel for the State, on the other hand, raises objection with regard to the genuineness of the legal heirs who have come to this Court by filing the review petition. However, the interest of justice would be best protected and served, if this interlocutory application is allowed for the limited purpose of giving liberty to the Petitioners to continue in the review petition which has

been filed challenging the judgment and decree passed in the aforesaid second appeal. Accordingly, the leave is granted and the Petitioners are allowed to pursue this review petition

**RVWPET No.293 of 2020**

16. Heard the learned counsel for the Petitioners as well as the learned Additional Government Advocate appearing for the State- Opposite Parties.

17. In view of the leave granted by this Court in I.A. No.558 of 2020, learned counsel for the Petitioners is given liberty press the review application.

18. It is submitted by the learned counsel for the Petitioner that the sole Appellant in the above noted second appeal was the plaintiff in O.S. No.136 of 1985, a suit of declaration, filed before the court of Munsif, Bhadrak. On perusal of the record, it appears that the suit was allowed and thereafter the defendant preferred an appeal before the lower appellant court. Further, it seems that the Title Appeal No.75/227 of 1986-87 preferred by the defendant was allowed by the Additional District Judge, Bhadrak. Thereafter, the second appeal has been preferred by the plaintiff-appellant in the year 1990 while the plaintiff-appellant died on 15.6.1996. Further, it is stated that the filing of the above noted second appeal at the instance of the

sole appellant was not within the knowledge of his legal heirs, i.e., present Petitioners. It is further submitted that in the absence of the Petitioners, the matter was taken up by this Court and the second appeal was disposed of by a judgment dated 20.11.2017. He, by relying upon the decisions reported in 2001 (II) OLR-(SC) 261, AIR 1977 Orissa 137 and Volume-XLII (1976) CLT-1283, submits that a decree against a dead person is a nullity. Therefore, the Petitioners are not bound by the aforesaid judgment and decree and, accordingly, pray before this Court that review petition be considered in its proper perspective and the Petitioners be given an opportunity to intervene in the second appeal lawfully by filing proper substitution petition along with setting aside of abatement as well as for condonation of delay.

19. Considering such submission and further taking into factual background as well as proposition of law as has been laid down by the Supreme Court in the decision reported in 2001 (II) OLR-(SC) 261, this Court, while allowing the review petition, recalled the judgment dated 20.11.2017 passed in Second Appeal No.219 of 1990. Further it is directed the second appeal be placed before the assigned Bench. It is open for the Petitioners to file substitution, setting aside, abatement and condonation petition and in the event

the same are filed within a period of two weeks from today, the same shall be considered by the assigned Bench in accordance with law.

20. With the aforesaid observation, this review petition is allowed.

***(A.K. Mohapatra)***  
***Judge***

*Debasis*

