IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A.No. 328 of 2002

1. Sachida Nand Pandey, @ Sachia Nand Pandey,
2. Udai Narayan Pandey,
3. Heera Nand Pandey, @ Heera Pandey @ Heera Pandey
4. Most Sundar Kali Kuar, widow of Madhusudan Pandey, deceased
5. Most. Shanti Devi, daughter in-law of widow of Madhusudan Pandey, deceased.
6. Sharda Devi, daughter of Bindeshwari Pandey, deceased and wife of Mangal Tiwary.

   No.1 to 5 residents of village Barahmoriya, P.O. Bhandar, P.S. Bishrampur, District - Palamau and no.6 resident of village Khoridih, P.O. Ataula, P.S. Manjhiaon, District Garhwa.
7. Asarfi Pandey, Son of Gariba Pandey, deceased
8. Ambika Pandey, Son of Gariba Pandey, deceased

   No.7 and 8 residents of village Barahmoriya, P.O. Bhandar, P.S. Bishrampur, Distt. Palamau.

   (N.B.; Bikarama Pandey, son of Baldeo Pandey, deceased, plaintiff respondent at serial no.2 of the memorandum of appeal by the defendants - appellants (viz. respondents herein) died while T.A. No. 14 of 1994 was pending but the defendants-appellants viz respondents herein did not keep step to get his legal representatives substituted hence the T.A. No. 14 of 1994 as a whole automatically had abated nevertheless this fatal legal lacuna in the maintainability of the appeal unfortunately was not noticed at all).

... (Plaintiffs-Respondents) Appellants.

Versus

1. Dhurv Kumar Pandey, son of Jagarnath Pandey, deceased
2. Most. Taregan Kuar, widow of Jagarnath Pandey, deceased (deleted)
3. Tetar Devi, wife of Dasrath Pandey, daugther of Jagarnath Pandey, deceased
4. Pushpa Devi, wife of Gokhula Pandey
5. Chandrawat Kumari (deleted)

   No. 1, 2 and 5 residents of village Barahmoriya, P.S. Bishrampur, Distt. Palamau, No.3 and 4 residents of village and P.O. Godarma, P.S. Bishrampur, Distt. Palamau.
6. (i) Shanti Kuer , W/o of Late Tirathraj Pandey
7. Santan Pandey, son of Late Deo Dutta Pandey
8. Panpati Devi, wife of Chaturgun Dubey (Abated)
9. Sona Devi, wife of Nathan Dubey, daughter of Late Deo Dutta Pandey
10. Kaushalya Devi, wife of Ramraj Dubey, daughter of Late Deo Dutta Pandey
11. Shanti Devi, wife of Amardeo Chaubey, daughter of Late Deo Dutta Pandey

    No. 6 and 7 residents of village Barahmoriya, P.S. Bishrampur, District -Palamau, No.8,9 and 10 residents of village Purabdiha, P.0. Purabdiha, P.S. Chainpur, District Palamau and No. 11

resident of village Hasandag, P.O. Hasandag, P.S. Meral, Distt. Garhwa.

12. (i) Sarswati Kuer, W/o Lae Khedan Pandey
13. Most. Phuljhari Kuar, (deleted)
14. Balmukund Pandey, son of Late Sagar Pandey
15. Parsuram Pandey, son of Late Sagar Pandey
16. Dashrath Pandey (deleted)
17. Yugal Kishore Pandey, son of Late Sagar Pandey
18. Sumanth Pandey, son of Late Sagar Pandey
19. Ram Sawari Devi, wife of Nand Kishore Dubey, son of Late Sagar Pandey
20. (i) Sunil Kumar Pandey, r/o vill- Jorn, P.O. & P.S.- Daltonganj, Dist.- Palamau

    No. 12 to 18 respondent of villege Barahmoriya, P.O. Bhandar, P.S. Bishrampur, Distt. Palamau. No. 19 resident of village Banpurwa, P.O. Tildag, P.S. Garhwa, Distt. Garhwa and No. 20 resident of village- Jorn, P.S. - Daltonganj, Distt. Palamau.
21. Shrikant Pandey, son of Late Purushottam Pandey
22. Ramakant Pandey, son of Late Purushottam Pandey
23. Sunil Kumar Pandey, son of Late Purushottam Pandey
24. Dilip Kumar Pandey, son of Late Purushottam Pandey |
25. Most. Kalawati Kuar, widow of Late Purushottam Pandey

    No.21 to 25 residents of village Barahmoriya, P.D. Bhandar, P.S. Bishrampur, Distt. Palamau.
26. Dhanwanti Kuar, widow of Late Bishwanath Pandey (Deleted)
27. Narad Pandey, son of Late Bishwanath Pandey
28. Bateshwar Kumar Pandey, son of Late Bishwanath Pandey
29. Bimla Devi wife of Rajnandan Tiwary, daughter of Late Bishwanath Pandey

    No. 26 to 28 residents of village Barhamoriya, Kala, P.0.Bhandar, P.S. Bishrampur, District - Palamau and No.29 resident of village - Kasnap, P.D. Sondiha, P.S. Majhiaun, District Palamau.
30. Satyanarayan Pandey, son of Laldhari Pandey, deceased, resident of village Barahmoriya, P.O. Bhandar, Distt. Palamau,
31. Gunja Devi (deleted)
32. (i) Suryadeo Dubey, resident of village- Chanaya, P.S.- Bishrampur, Dist.- Palamau
33. Upeneti Kuar, widow of Mangal Dubey, deceased, resident of Kowari, P.S.- Majhiaon, Dist.- Palamau at present Dist.- Garhwa

… (Defendants- Appellants) Respondents

Coram: **HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY**

For the Appellant : Mr. Bhaiya Vishwajeet Kumar , Adv.
For the Respondents : Mr. Arbind Kr. Sinha , Adv.
Mr. Baban Prasad , Adv.
Mr. Aniket Rohan , Adv.
Mr. A. Prakhar Sinha , Adv.

33 / 11.12.2024 **I.A. no. 1569 of 2006**

Heard.

Learned counsel for the appellants submits that the plaintiff of Title Suit no. 50 of 1989 of the court of learned Additional Munsif, I, Daltonganj at Palamau who was respondent no. 2 of Title Appeal no. 14 of 1994 of the court of 7th Additional District Judge, Palamau has died on 16.12.1995 during the pendency of the Title Appeal No. 14 of 1994, the judgment and decree of which was passed on 10.09.2002, hence, this appeal be disposed of being non-maintainable having been preferred against a judgment which is a nullity *non est*, null and void.

At this, learned counsel for the respondent nos. 7, 17, 18, 22, 23 and 30 submits that inadvertently, as the respondents who were appellants of the said Title Appeal no. 14 of 1994 were not aware of the death of the respondent no. 2 – Bikram Pandey, during pendency of the said appeal, hence, the respondents of this Second Appeal will approach learned First Appellate Court for impleading the legal representatives of the deceased respondent no. 2 of the said Title Appeal No. 14 of 1994. Learned counsel for the said respondents also places before this Court the order passed by a coordinate Bench of this Court in the case of **Alimuddin Ansari Vs. Wasia Khatoon,** reported in **(2004) 4 JCR 700 (Jhr).**

Having heard the submissions made at the Bar and after going through the materials in the record, it being a settled principle of law that the decree passed in favour of a party, who was dead or against the party who was dead is a nullity, as has been observed by the Hon'ble Supreme Court of India, in the case of ***Kishun alias Ram Kishun (Dead) Through LRS. Vs. Behari (Dead) By LRS***., reported in ***(2005) 6 SCC 300***, para-6 of which reads as under:-

> *"6. As rightly pointed out by learned counsel for the appellants and fairly agreed to by learned Senior*

Counsel for the respondent, the decree passed by the High Court in favour of a party who was dead and against a party who was dead, is obviously a nullity. It is conceded that the legal representatives of neither of the parties were brought on record in the second appeal and the second appeal stood abated. On this short ground this appeal is liable to be allowed and the decision of the High Court set aside."

Hence this Court is of the considered view that since the impugned judgment against which this appeal has been preferred is a nullity having been passed against a dead person, this Second Appeal being not maintainable having been preferred against the judgment which is nullity, this Second Appeal is dismissed being not maintainable.

In view of the submissions made by the respondents, it is made clear that this order will not stand in the way of the respondents of this Second Appeal for taking such steps as are permissible in law before learned First Appellate Court being 7th Additional District Judge, Palamau or its successor court to have the decree reopened and to have the legal representatives of the respondents no. 2 of Title Appeal No. 14 of 1994 brought on record in that court.

In view of disposal of the Second Appeal, the interlocutory applications, if any, are disposed of being infructuous.

(ANIL KUMAR CHOUDHARY, J.)

AFR-Smita/-