

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.54 of 2022

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1. Dinesh Sahni, aged about 43 years, Male, Son of Late Durga Sahani Resident of Village-Lakhaura Braham Tola, P.O. and P.S.-Lakhaura, District-East Champaran.
 2. Pramod Sahani, aged about 39 years, Male, Son of Late Durga Sahani Resident of Village-Lakhaura Braham Tola, P.O. and P.S.-Lakhaura, District-East Champaran.
 3. Rajesh Sahani, aged about 31 years, Male, Son of Late Durga Sahani Resident of Village-Lakhaura Braham Tola, P.O. and P.S.-Lakhaura, District-East Champaran.
 4. Chhathiya Devi, aged about 70 years, Female, Wife of Late Durga Sahani Resident of Village-Lakhaura Braham Tola, P.O. and P.S.-Lakhaura, District-East Champaran.

... ..Intervener / Petitioner/s

Versus

1. Shiv Narayan Sahani, Son of Puran Sahani, Resident of Village-Lakhaura Braham Tola, P.O. and P.S.-Lakhaura, District-East Champaran.
2. Jeet Narayan Sahani, Son of Puran Sahani, Resident of Village-Lakhaura Braham Tola, P.O. and P.S.-Lakhaura, District-East Champaran.
3. Jangali Sahani, Son of Puran Sahani, Resident of Village-Lakhaura Braham Tola, P.O. and P.S.-Lakhaura, District-East Champaran.

..... Defendants.....Opposite Party 1st, Set.

4. Phulgeni Devi, Wife of Sonalal Sahani, Daughter of Late Durga Sahani, Resident of Village-Jhit Kahiya, P.O. and P.S.-Lakhaura, District-East Champaran.
5. Leela Wati Devi, Wife of Vidya Sahani, Daughter of Late Durga Sahani, Resident of Village-Semrahiya Jhitakhiya, P.O. and P.S.-Lakhaura, District-East Champaran.

... ..Interveners/ Opposite Party 2nd Set Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar No.III, Advocate Mr. Bijendra Kumar, Advocate
For the Respondent/s	:	Mr. Kumar Anjaneya Shanu, Advocate Mr. Shubham, Advocate Mr. Ranvir Pratap Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL ORDER

15 17-03-2026 Heard the learned counsel for the petitioners as well
as learned counsel for the respondents.



2. This Civil Revision application has been filed under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') against the order dated 07.09.2022 passed in the Title Suit No. 44 of 2015, by the learned Munsif Sadar Motihari, East Champaran (hereinafter referred to as 'Trial Court') whereby and whereunder the learned Trial Court has dismissed the application dated 01.09.2021 filed by the intervener/petitioners and opposite party nos.4 and 5.

3. Learned counsel for the petitioners submitted that during the pendency of the Title Suit No. 44 of 2015 sole plaintiff namely Durga Sahani died on 06.04.2021 leaving behind his wife, three sons and two daughters as his legal heirs, who are petitioner nos.1 to 4 and opposite party nos. 4 and 5. Furthermore, the petitioners and opposite party nos. 4 and 5 filed a petition on 01.09.2021 under order I Rule 10 of the CPC in the learned Trial Court in Title Suit No. 44 of 2015, to substitute their name after expunging the name of the plaintiff, in order to contest the case.

3.i. He further submitted that the learned Trial Court have not considered that Section 151 of the CPC which confers inherent power to Court to pass any order in accordance with



law in order to arrive at right conclusion, and abated the suit which is not tenable in the eyes of law. Further, it was submitted that the learned Trial Court has not considered the statement made in paragraph no. 4 of the petition filed by petitioners and opposite party nos. 4 and 5. He further submitted that the learned Trial Court have not considered that the defendants have not filed Petition under Order XXII Rule 10A of the CPC in order to inform the Court regarding the death of plaintiff on 06.04.2021 and passed the order which is contrary to the law. He lastly submitted that learned Trial Court has committed a manifest error of law in passing the impugned order which is not justified in the eyes of law and liable to be set aside.

4. Learned counsel for the opposite parties submitted that, the petition dated 01.09.2021 is not maintainable under Order I Rule 10 of the CPC rather the legal heirs of the deceased plaintiff should have filed the substitution petition under Order XXII Rule 3 of the CPC within the statutory period of limitation but failed to do so. He further submitted that unless the petitioners took step for the abatement under Order XXII of the CPC, the petitioners are not liable to come on record by taking shelter under Order I Rule 10 of the CPC peculiarly when there is clear provision regarding abatement is



laid down in CPC.

4.i. He further submitted that, the learned Trial Court has rightly rejected the petition dated 01.09.2021 filed by the legal heirs of the sole plaintiff (deceased) under Order I Rule 10 of the CPC and rightly held that the suit had abated by operation of law on 07.07.2021 under Order XXII Rule 3 of the CPC. Further, it was also stated that the impugned order does not suffer from any illegality, irregularity, or jurisdictional error so as to attract the revisional jurisdiction of this Hon'ble Court under Section 115 CPC. The same has been passed after due appreciation of facts, applicable legal provisions, and settled judicial pronouncements of the Hon'ble Supreme Court of India.

4.ii. He also submitted that the petitioners have attempted to circumvent the mandatory procedure prescribed under Order XXII Rules 3 and 9 of the CPC by filing the petition dated 01.09.2021 under Order I Rule 10 CPC for substitution of their names in place of the deceased plaintiff, without filing any petition under Order XXII Rule 9 of the CPC for setting aside the abatement or for condonation of delay under Section 5 of the Limitation Act, 1963. Further it was also submitted that, the learned Trial Court, after hearing both sides and upon a detailed discussion of Order I Rule 10 of the CPC



and Order XXII Rules 3 & 9 of the CPC, and authoritative judgments of the Hon'ble Apex Court, rightly held that once the suit has abated, the same cannot be revived except by filing appropriate petitions for setting aside abatement and condonation of delay. Hence, the petition under Order I Rule 10 CPC was not maintainable and was accordingly rejected.

4.iii. It was further submitted that the provision of Order XXII Rule 3 of the CPC is mandatory in nature. Therefore, upon the death of the sole plaintiff, if no substitution petition is filed within 90 days, abatement takes place automatically by operation of law. Furthermore, the reliance of the petitioners on Order XXII Rule 10A CPC is wholly misconceived. The said provision only casts a duty on the pleader to inform the Court about the death of a party, but failure to do so does not extend or suspend the limitation period prescribed under Article 120 of the Limitation Act, 1963 for filing substitution. In the instant case, the knowledge of death of plaintiff being within the exclusive domain of the petitioners, their omission to file a substitution petition within limitation cannot be condoned merely on the plea that the defendants did not inform the Court.

4.iv. He Further submitted that, the petitioners



reliance in Section 151 of the CPC is equally untenable and is denied. It is a settled principle that inherent powers under Section 151 of the CPC cannot be invoked to override or circumvent the specific and mandatory provisions of the CPC. Once a suit stands abated under Order XXII Rule 3 of the CPC, it can only be revived under Order XXII Rule 9 of the CPC upon showing sufficient cause, and not through inherent powers. The learned Trial Court has rightly held that the petitioners, being fully aware of the death of the plaintiff, allowed the statutory period to lapse and subsequently tried to bypass the consequences of abatement by invoking an irrelevant provision of law. Further in order to support his averment he relied on the judgment of Hon'ble Apex Court passed in ***Jayalaxmi Janardhan v. Lilachand 1998(3) Mh.L.J.618*** He lastly submitted that the impugned order is a reasoned and speaking order, based on settled legal principles, and does not reflect any arbitrariness or non-application of judicial mind.

5. At this stage, before adverting to the rival submissions, it would be apposite to notice the scope of interference by this Court under Section 115 of the CPC. The revisional jurisdiction of this Court is confined to examining whether the Trial Court has exercised a jurisdiction not vested



in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. In the present case upon considering the material available on record, fact and law, it is settled principle of law that for applying wrong provision or section, neither the right of anyone is defeated nor the petition gets dismissed.

6. Moreover, procedural laws are meant to advance the cause of justice and not to frustrate it, and that Courts should ordinarily lean in favour of deciding matters on merits rather than shutting the doors of justice on technical grounds. In the present case, the learned Trial Court, was required to adopt a pragmatic and justice-oriented approach while considering the prayer of the petitioners for substituting them in the Title Suit No. 44 of 2015 and decide the suit on the basis of merits and shall consider the benefits of Section 14 of the Limitation Act, 1963, sympathetically.

7. In view of the aforesaid discussions and settled principles of law, the impugned order, therefore, suffers from material irregularity in exercise of jurisdiction and has resulted in grave prejudice to the petitioners. Learned Trial Court, instead of adopting a liberal and justice-oriented approach, rejected the petitioners' prayer on a hyper-technical ground of



approaching wrong provision and procedure, ignoring that procedural prescriptions are handmaids of justice and not meant to defeat substantive rights. Position of law is well settled that Courts should ordinarily lean in favour of adjudication on merits rather than dismissal on technicalities.

8. In the light of aforesaid observation, the petitioners have liberty to approach appropriate forum with a petition under Order XII of the CPC and petition for condonation of delay along with substitution petition, without any prejudice from this order, the learned Trial Court shall pass an appropriate order on merits and also consider the benefits of Section 14 of the Limitation Act, 1963 sympathetically.

9. Accordingly, the present Civil Revision No. 54 of 2022 is disposed of and remitted back to concerned Court for proper adjudication in accordance with law.

(Ramesh Chand Malviya, J)

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