

**(2007) 11 JH CK 0001**

**Jharkhand High Court**

**Case No:** None

Suresh Thakur and Others

APPELLANT

Vs

Ira Mitra and Others

RESPONDENT

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**Date of Decision:** Nov. 30, 2007

**Citation:** (2008) 2 JCR 88

**Hon'ble Judges:** Narendra Nath Tiwari, J

**Bench:** Single Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

N.N. Tiwari, J.

As reported by the office, notice by registered post with due acknowledgement was issued on 8th January, 2007 to the respondent Nos. 4 and 5, but neither A/D nor undelivered registered cover has returned.

2. Learned Counsel appearing on behalf of the appellants submitted that registered notice was correctly addressed and was duly stamped and that it must have been served on the said respondents.

3. Considering the above that the notice was issued by registered post with due acknowledgement as far back as in the month of January, 2007 and till date neither A/D nor undelivered registered cover has been returned, the notice on respondent Nos. 4 and 5 is accepted as valid service.

4. In this interlocutory application, the appellants have prayed for expunction of the name of respondent No. 1 and to substitute the names of respondent Nos. 4 and 5 in her place.

5. It has been stated that the respondent No. 1 died on 14th December, 2004 in Kolkata. The appellants came to know about the death of respondent No. 1 on 1st June, 2007 and immediately, thereafter, this application has been filed. It has been stated that though this application has been filed belatedly, since the legal heirs of

respondent No. 1 are already on record as respondent Nos. 4 and 5, this appeal has not abated and has not been adversely affected.

6. In the aforesaid circumstance, it has been prayed that the name of respondent No. 1 be expunged from the cause title and in her place, the names of respondent Nos. 4 and 5 be substituted as respondent Nos. 1 and 1(a) to represent the respondent No. 1 as well as to defend the case in their own capacity.

7. Copy of this interlocutory application has been served on the learned Counsel for the respondents, but no counter-affidavit has been filed in opposition.

8. In view of the said admitted position, this interlocutory application is allowed. Let the name of respondent No. 1 be expunged from the cause title and in her place, names of respondent Nos. 4 and 5 be substituted as respondent Nos. 1 and 1(a), as legal heirs of respondent No. 1 as also parties in their own capacity, in this appeal. I.A. No. 1668 of 2007 is disposed of I.A. No. 1668 of 2007 is disposed of.