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(2004) 08 JH CK 0007

Jharkhand High Court

Case No: S.A. No. 105 of 2003

Shivratri Devi and Others	APPELLANT
Vs	
State of Jharkhand and Others	RESPONDENT

Date of Decision: Aug. 13, 2004

Acts Referred:

- High Court of Jharkhand Rules, 2001 - Rule 97

Citation: (2005) 1 JCR 168

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: C.S. Prasad, for the Appellant; Anil Kumar Jha and Shamim Akhtar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N.N. Tiwari, J.
The learned counsel for the appellants is permitted to make necessary correction in the cause title of the interlocutory

application.

2. In the instant interlocutory application the appellants have prayed for leave to make themselves appellant and to allow them to proceed with this

appeal as the legal representative of deceased Jagdish Chowdhury who was the defendant-respondent before the lower appellate Court and died

after conclusion of the hearing of the appeal and before passing the judgment and decree therein and as such the names of legal representatives

could not be substituted in the lower appellate Court but have been entered as appellants in the memo of appeal. In support of same the appellants

have sworn an affidavit. Defect has been pointed out by the stamp reporter regarding substitution of the names of the legal representative in place

of Jagdish Chowdhury in the cause title of memo of appeal though their names do not appear in the decree of the lower appellate Court.

3. Mr. Anil Kumar Jha learned counsel appeared for the respondent No. 10 and Mr. Shamim Akhtar, learned counsel, for the State-respondent

and opposed the prayer made in the application.

4. Mr. Jha objecting the prayer made in the interlocutory application has submitted that since the decree is in the name of a dead person the same

is a nullity and the appeal preferred by the legal heirs representatives cannot be entertained. He further submitted that since the said Jagdish

Chowdhury died before the decree was passed by the Courts below any order regarding substitution can only be passed by the lower appellate

Court and this Court cannot pass an order allowing the legal representatives to proceed with this appeal unless they are so substituted by the lower

appellate Court.

5. In my view. Rule 97 of High Court of Jharkhand Rules, 2001 is answer to such objection raised by the learned counsel. Rule 97 runs thus :-

97(a) a beneficiary in property which at the date of such decree on order was vested in or was in the possession of a trustee, executor,

administrator or a receiver or manager appointed by a Court, who as such was party to such a decree or order, or

(b) a legal representative as such of a deceased party to such decree or order, or

(c) an assignee of a party to such decree or order by assignment subsequently to the date thereof, or

(d) a person whose interest arose after the date of such decree or order by reason of any creation or devolution of interest by, through or from any

party to such decree or order is affected and such beneficiary, legal representative, assignee or person was not or has not been made a party to

such decree or order or to proceedings there under or thereon and desires to appeal there from, he may name himself in the memorandum of

appeal as an appellant if along with such memorandum of appeal he presents an application for leave to make himself an appellant and an affidavit

stating such facts as may be necessary in support of his applications.

6. In the instant case, respondent died after conclusion of the hearing of the appeal and before the judgment and decree was passed. As stated by

Mr. C.S. Prasad learned counsel for the appellants that same was informed by filing an application and thereupon the appellants before the lower

appellate Court, who are the respondents in this appeal, had filed an application for substitution of legal heirs of the deceased Jagdish Chowdhury

which is annexure-2 to this 1A. According to him, no order was passed on the said application on the ground of provision of Order XXII Rule 6

of the Code of Civil Procedure. According to the learned counsel, the said legal heirs and representatives were made party in the Execution Case

No. 2 of 2003 levied by the respondents in the Court below a copy of which has been annexed as AnneXure-3 to this IA.

7. In his appeal some of the representatives of Jagdish Chowdhury are the appellants and as stated by the appellants some of the heirs who are not

present at the time of filing of the appeal could not join as appellants and have been made proforma respondent. The said proforma respondents

have no adverse interest to that of the appellants. According to the Mr. Prasad, they are the sons and daughter of late Jagdish Chowdhury and the

said proforma respondents even may be transposed as appellants and as such there is no difficulty in making them as party invoking the provision

of the Rule 97 of High Court of Jharkhand Rules 2001.

8. In my opinion there is much substance in the submission of Mr. Prasad. In the facts and circumstances of the case there is no impediment in

granting leave to the appellants to file this appeal in their names in place of the deceased Jagdish Chowdhury. The leave is thus granted. This IA

No. 736 of 2003 is allowed. Consequently defect No. 1 as pointed out by the office will not be treated as defect.

The IA No. 736 of 2003 stands disposed of.