
Bhaiya Sarju Singh and Others Vs Bhaiya Suresh Singh and Others

LPA No. 81 of 1992 (R)

Court: Jharkhand High Court

Date of Decision: March 26, 2003

Citation: (2003) 3 JCR 338

Hon'ble Judges: P.K. Balasubramanyan, C.J; Gurusharan Sharma, J

Bench: Division Bench

Advocate: V.P. Singh, for the Appellant; Sudarshan Srivastava, for respondents 1 and 15, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. These Interlocutory Applications are for substituting the legal representatives of deceased appellant No. 1 after deleting his name, and for

condoning the delay in making the application, after setting aside the abatement, if any.

2. Appellant No. 1 is said to have died on 18.8.1996, The application for substitution (at flag-"A") was filed on 24.1.2003, i.e, more than six

years after the death of appellant No. 1. Obviously, the petitioners herein cannot take the plea that they were not aware of the death of their father.

Hence, they have pleaded the other alternative, that they were not aware of the pendency of the Appeal. We are bound to look at the reason

given, with some skepticism.

3. The aforesaid applications are opposed by the learned counsel for respondents 1 and 15 by submitting that the story put forward is not true.

4. Be that as it may, the instant Appeal is against a preliminary decree for partition arid is pending for quite some time before this Court. In the

circumstances, we are not satisfied that it would be just and proper to dismiss the Appeal as abated as against the legal representatives of

deceased appellant No. 1. Making a liberal approach in this context, we find that sufficient cause has been made out by the petitioners herein for

condoning the delay; but at the same time we find that the petitioners should be put on terms for their absence of course in not taking step for a

quite long time.

5. Hence, it is ordered that the application at flag-"B" will stand allowed, the delay in filing the substitution petition will stand condoned and the

abatement will stand set aside and the application at flag "A" for substitution of the legal heirs of deceased appellant No. 1, will also stand allowed

on deletion of the name of deceased appellant No. 1 from the cause title of the memorandum of Appeal on condition that the petitioners herein pay

a cost of Rs. 500.00 (five hundred) to respondents 1 and 15 within a period of three weeks from today. The cost shall be tendered to learned

counsel for respondents 1 and 15 and receipt in that behalf produced in Court. If the cost, as ordered above, is not paid within the time fixed, the

above applications will stand dismissed without further reference to a Bench.

6. So far as IA No. 197 of 2003 (at flag "C") is concerned, learned counsel for the appellants seeks a-week's time to make certain amendments

therein. Let it be so done and the matter be placed thereafter.