

**(2013) 07 JH CK 0079**

**Jharkhand High Court**

**Case No:** F.A. No. 231 of 2010

Shri Binod Mahato

APPELLANT

Vs

Mohit Mahato and Others

RESPONDENT

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**Date of Decision:** July 12, 2013

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 4, Order 22 Rule 9, 151

**Hon'ble Judges:** P.P. Bhatt, J

**Bench:** Single Bench

**Advocate:** Sanjay Kumar, for the Appellant; M.P. Sinha, for the Respondent

**Final Decision:** Disposed Off

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### **Judgement**

P.P. Bhatt, J.

I.A. No. 2205 of 2013

1. The present interlocutory application is filed under Order XXII, Rule 4 and 9 and Section 151 of the CPC for substitution of legal heirs of defendant Nos. 5, 9 and 15 after setting aside the abatement by condoning delay, if any. Heard the learned counsel for the appellants. Perused the application, which is supported by an affidavit.

2. It is submitted that respondent No. 5 namely Sukhi Mahatain died on 29.06.2004 during the proceeding of Partition Suit No. 18 of 2003 leaving behind his legal heirs as stated in paragraph 4 of the application. It is further stated that although the name of legal heirs of deceased respondent No. 5 were duly substituted before the trial court but due to inadvertence and bona fide mistake namely Sukhi Mahatain-respondent No. 5 was also made party in the present appeal along with her substituted legal heirs.

3. It is further stated that so far as respondent No. 9 namely Lehri Mahato, Daughter of Late Kalicharan Mahato is concerned, she died on 03.09.2009, unmarried and she

was being represented by her natural guardian namely Madan Mahto-respondent No. 6, who is elder brother of the deceased, who has already appeared as defendant No. 9 (respondent No. 6 herein).

4. It is further stated that respondent No. 10 namely Nemia Mahatain died on 24.02.2011 leaving behind his legal heirs as stated in paragraph 7 of the present interlocutory application.

5. It is further stated that respondent No. 15 namely Bishu Mahato, husband of Late Kamli Mahatain is concern, she died during the pendency of Partition Suit No. 18 of 2003 on 11.08.2003 leaving behind his son namely Arun Chandra Mahato and although the name of legal heirs was duly substituted before the trial court, but due to inadvertence and mistake the same has been mentioned as respondent No. 15 namely Bishu Mahato in the instant appeal along with the substituted legal heirs.

6. In view of above position, the legal heirs of respondent No. 10 is requires to be substituted by setting aside the abatement. So far as respondent Nos. 5, 9 and 15 are concerned, the names are required to be deleted from the appeal memo.

7. Accordingly, the present application is allowed. The legal heirs of respondent Nos. 10 is ordered to be substituted, so far as respondent Nos. 5, 9 and 15 are concerned theirs names be deleted. Necessary correction be carried out in the appeal memo.

8. Let fresh notice be issued to the legal heirs of respondent No. 10 by registered post with A/D as well as ordinary post, for which requisites etc. must be filed within one week.

9. The notice is made returnable after four weeks. Accordingly, I.A. No. 2205 of 2013 stands disposed of.