(2016) 05 JH CK 0176

JHARKHAND HIGH COURT

Case No: S.A. No. No. 207 of 2012.

Kanti Devi and Others - Appellants @HASH Smt. Prema Sahay and Others	APPELLANT
Vs	
	RESPONDENT

Date of Decision: May 16, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 4, Order 22 Rule 9
- Limitation Act, 1963 - Section 5

Citation: (2016) 4 AIRJharR 447

Hon'ble Judges: Amitav K. Gupta, J.

Bench: Single Bench

Advocate: Mr. B.V. Kumar, Advocate, for the Appellants; Mr. Arbind Kr. Sinha, Advocate, for the Respondent No. 1

Final Decision: Dismissed

Judgement

Mr. Amitav K. Gupta, J. - I.A. No.2750 of 2016 I.A. No.2748 of 2016.

The above interlocutory applications have been filed on behalf of the appellants under Section 5 of the Limitation Act and under Order 22 Rules 4 & 9 of the Code of Civil Procedure respectively.

2. It transpires that on 11.05.2016, permission was granted to the learned counsel for the appellants for making necessary correction in the interlocutory application as the learned counsel for the respondents had pointed out that the date of death of respondent no.03, Kumari Kiran has been mentioned as 17.07.2013 whereas she had died on 17.07.2009.

3. Today, counsel for the appellants has submitted that he shall carry out the necessary correction in course of day.

4. Learned counsel for the respondent no.01 had pointed out that all the legal heirs/representatives have not been brought on record as name of the husband of the deceased respondent no.03 was not mentioned in the interlocutory application for substitution of legal heirs, to which learned counsel for the appellants has submitted that he has filed supplementary affidavit mentioning that the substitution application had been filed for substitution of the names of the sons only and inadvertently the name of the husband of deceased respondent no.03 could not be incorporated hence prays that the name of the husband along with the names of the sons be substituted as legal heirs in place of deceased respondent no.03. It is submitted that the appellant is an aged and a widow and she was not aware of the procedural law that substitution petition had to be filed. That when she contacted the counsel she was advised to file the substitution application for bringing on record the legal heirs/representatives of the deceased respondent no.03, who died in course of preparation of the final decree in the lower appellate court. That the respondent had also not provided any information under Order 22, Rule 10A of the Code of Civil Procedure regarding the death of respondent no.03

On the above grounds, it is submitted that delay in filing the substitution petition be condoned, abatement, if any be set aside and the application (I.A. No.2748 of 2016) filed for bringing on record the legal heirs/representatives of deceased respondent No.03, be allowed.

5. Learned counsel for the respondent no.01 has submitted that respondent no.01 is also a widow lady and the appellants have not given any reasonable explanation neither any sufficient cause is made out for condoning the delay. That it cannot be believed that the appellants did not have knowledge about the death of an agnate in the family.

6. Heard. It is evident that the parties are agnates though the explanation given by the appellants is not satisfactory however, since the second appeal has been filed thus in the interest of justice the delay is condoned, abatement, if any is set aside and the legal heirs/representatives of deceased respondent no.03 are ordered to be brought on record subject to the payment of cost of Rs.15,000/- (Rupees fifteen thousand only). Out of the said amount Rs.7,500/- (Rupees seven thousand five hundred only) shall be paid to the respondent no.01, and rest of the amount i.e., Rs.7,500/- (Rupees seven thousand five only) shall be deposited with the Member Secretary, Jharkhand State Legal Services Authority, Nyay Sadan, Doranda, Ranchi by 30.06.2016, failing which, I.A. No.2750 of 2016, shall stand dismissed, as against the respondent no.03.

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7. Office is directed to list this case on 19.07.2016, if the ordered amount is so deposited by the appellants.