

In the court of Sessions Judge, Muzaffarpur.

Lakhan Rai & OrsAppellants

Vs

Ram Lagan Rai & OrsRespondents

T.A.no. 54/2009

<i>Sl .No.</i>	<i>Date of order of proceeding</i>	<i>Order with the signature of the court</i>	<i>Office action taken with date.</i>
<i>1</i>	<i>5/8/2023</i>	<i>The case record has been placed before me for order after hearing both the parties .</i> <i>It has been submitted by learned advocate appearing on behalf of appellants that substitution petition has been filed on 31/3/2022, mentioning therein that so many persons have died during the trial of original suit and judgment and decree has been passed in that situation because it was not brought before the learned trial court . It has also been submitted that this is a civil dispute between the parties and if appellants will not be permitted to substitute legal heirs of the deceased-persons then the dispute will not be resolved for ever . It has further been submitted that though it is too late and it would have been raised before the learned trial court prior to pronouncement of judgment and decree but then too , natural justice requires that civil dispute should be disposed off on contest after giving opportunity to the parties.</i> <i>A separate petition for condonation of delay has also been filed on behalf of appellants U/s 5 of the Limiation Act praying therein to condone</i>	

02	Contd. 5/8/2023 T.A.no. 54/2009	<i>the delay and to pass order.</i> <i>Learned advocate appearing on behalf of appellant no.2 has submitted that there was an automatic abatement against the appellant which is to be recalled in the interest of natural justice .</i> <i>Learned advocate appearing on behalf of the respondent has opposed the same .</i> <i>Heard both sides and perused all petitions referred above . On perusal of main substitution petition, it is clear that some persons have died in the year 2013, 2014, 2016 , 2017 and 2018 and their legal heirs have not been made parties to the suit on time and judgment and decree was passed and this appeal has been preferred . It is true that there is inordinate delay and some automatic abatement has also been caused due to lapse of non-making of proper party after the death of the necessary party.</i> <i>But in civil disputes, it is required that all disputes regarding to disputed property must be resolved in one suit for ever between all the parties . In the present case , if necessary parties will not be permitted to be impleaded as party in the suit then it will frustrate the purpose of the civil appeal and dispute will continue for ever .</i> <i>Thus without discussing the total number of the persons to be impleaded in this case as necessary party by way of substitution and without discussing the delay in filing of the substitution petition, this court feels it just and proper in the interest of justice to condone the delay and to allow the petition of the appellant to substitute all necessary persons in this case so that this title appeal may be heard in proper way.</i>	
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03	Contd. 5/8/2023 T.A.no. 54/2009	<i>On the basis of discussions made , the substitution petition filed on behalf of the appellant dated 31/3/2023 is allowed and they are directed to substitute the parties within the above stipulated period of time. The automatic abatement of appellant no.2 is also recalled .</i> <i>It seems pertinent to mention here that , as appellants have filed this substitution petition after a lapse of very long period and respondents have been compelled to contest this appeal for the said period , some cost has to be imposed so that appellants will be cautious in future . Accordingly, a cost of Rs3000/- (three thousand) is being imposed which will be paid to the contesting respondents within a period of 30 days . It is made clear that the appellant will pay cost to the contesting respondents as pre-condition of this order failing which this order will lose its effect suo-motto. It is further made clear that if the cost is paid within time then the appellant will be at liberty to substitute necessary parties as per their substitution petition dt. 31/3/2023.</i> <i>(Dictated)</i> Sd/-M.K.Singh <i>District Judge,Muz</i>	
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