

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 119 of 2008

Rajendra Ram and Anr. "~~~~~" Appellants

Versus

Smt. Radhika Devi and others Respondents

CORAM : HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellants : Mr. J.S. Pandey, Advocate

For the respondents : Mr. A.K. Sinha, Advocate

12 / 29.10.2021

I.A. No. 325/ 2012 & 1210/2012

This interlocutory application has been filed under Order XXII Rule 4 of the CPC for substitution of legal heirs of the deceased respondent no.9 and 5 namely Shanti Devi & Surender Deo who died during the pendency of present appeal in the month of June 2010 and in the month of February 2011 leaving behind their legal heirs and representatives whose descriptions have been mentioned in para-4 & 5 of the present interlocutory application along with I.A. No.1210/2012 has been filed under Order 22 Rule 9 of the CPC for setting aside the abatement against respondent nos. 5 and 9.

It is submitted that there is a delay of one year in filing the substitution petition and one and half year in filing the present petition with respect to respondent nos.5 and 9. That the reasons for delay has been set out.

It is submitted that no informatory application has been filed under Rule 10A Order 22 CPC and they could not know about the death on the basis of service report of the notice issued against the aforesaid respondents.

Learned counsel for the respondents has submitted the reply has been filed objecting the I.A for condonation of delay.

It is submitted on behalf of the respondents that the death of deceased respondent nos. 5 and 9 has not been mentioned in the substitution petition. It is submitted that that the appellant was very much aware about the death of the respondents but no proper petition was filed within time.

Having heard the learned counsel for the parties and for the reasons stated in the present interlocutory application, abatement is set aside and the legal heirs/representatives of the deceased respondent

nos.9 and 5 who died during the pendency of present appeal leaving behind their legal heirs and representatives whose descriptions have been mentioned in para-4 & 5, are allowed to be substituted in place of the deceased respondent Nos.9 and 5 Shanti Devi & Surender Deo

Considering the submissions advanced on behalf of the appellant and for ends of justice and period of duration in filing the petition, the same is allowed. Accordingly the abatement of appeal against the said respondents is set aside and substitution petitions are allowed.

Let necessary amendment be made in the cause title of the present second appeal.

I.A. No. 325 of 2012 and I.A. No.1210/2012 stands allowed.

(GAUTAM KUMAR CHOUDHARY, J.)

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