

IN THE HIGH COURT OF JHARKHAND AT RANCHI
SA No.194 of 2006

Mukul D'cruj Appellant

Versus

Smt. Mary Tigga & Ors. Respondents

Coram: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Appellant : Mr.V.K.Prasad,Adv.

For the Respondents : Mr. Rohit Roy, Adv.

08 / 28.06.2022 I.A. No. 3990 of 2022, 3989 of 2022, 3988 of 2022

Learned counsel for the appellants submits that this Interlocutory Application No. 3990 of 2022 has been filed with a prayer to substitute the legal representatives of the proforma respondent no. 2 - Smt. Grace Toppo and proforma respondent no. 3 - Benedict Khako. It is further submitted that the proforma respondent no. 2 - Smt. Grace Toppo died on 06.01.2022 leaving behind her only 02 legal representatives whose names, addresses and parentage has been mentioned in paragraph 3 of the interlocutory application. It further submitted that the proforma respondent no. 3 - Benedict Khalkho died on 26.10.2013 leaving behind his widow Josphin but in the said paragraph 4 of the petition there is a dichotomy as it has also been mentioned that Josphin died on 28.08.2013 which falsifies the averments made in the said paragraph that respondent no. 3 - Benedict Khalkho died on 26.10.2013 leaving behind his widow Josphin as if the date of death of Josphin as mentioned in the said paragraph is correct then she pre-deceased Benedict Khalkho. Learned counsel for the appellant could not explain this dichotomy that when Benedict Khalkho died on 26.10.2013 leaving behind his widow Josphin, then, how Josphin has been stated to have been died prior to him.

Be that as it may, considering the fact that both Benedict Khalkho and Josphin have died, leaving being their only 02 daughters whose names, addresses and parentage has been mentioned in paragraph 4 of the interlocutory application and stay up to the substituted in place of the deceased respondent has no.3.

It is further submitted that Interlocutory Application No. 3989 of 2022 has been filed with a prayer to condone the delay in filing the petition for substitution of the legal representatives of the deceased proforma respondent no. 3. and Interlocutory Application No. 3988 of 2022 has been filed with a prayer to condone the delay in filing the petition for substitution of the legal representatives of the deceased proforma respondent no. 2. It is next submitted that the appellant being the illiterate rustic villager, was unaware of filing of the petition for substitution within the limitation period prescribed for the same. It is submitted that unless the delay in filing the petition for substitution of the only legal representative of the deceased proforma respondent nos. 2 and 3 is condoned, and the abatement if any, is set aside and the prayer for substitution of the only legal representative of the deceased proforma respondent nos. 2 and 3 is allowed, the appellant will be highly prejudiced.

Considering the aforesaid facts and circumstances of the case, the delay in filing the petition for substitution is condoned, the abatement, if any, is set aside and the prayer to substitute the only two legal representative of the deceased proforma respondent no. 2 as respondent no. 2(a)- Ravi Glorious Toppo and 2(b)- Nutan Toppo and only 02 legal representative of the deceased proforma respondent no. 3 as respondent no. 3(a)- Margret Khalkho and

3(b)- Kanta D'crujis allowed.

Registry is directed to incorporate the name of the only 02 legal representative of the deceased respondent no. 2 as respondent no. 2(a)- Ravi Glorious Toppo and 2(b)- Nutan Toppo and the only 02 legal representative of the deceased respondent no. 3 as respondent no. 3(a)- Margret Khalkho and 3(b)- Kanta D'crujin the cause title of the appeal memo with 'Red Ink'. Registry is also directed to mention the word 'Dead' against the name of the deceased proforma respondent nos. 2 and 3 , in the cause title of the appeal memo.

These interlocutory applications are disposed of accordingly.

(ANIL KUMAR CHOUDHARY, J.)

S.A. No. 194 of 2006

The appellant is directed to file requisites for service of notice on the respondent nos. 2(a), 2(b), 3(a) and 3(b), by registered post with A/D as well as under ordinary process within four weeks failing which; this appeal shall stand dismissed against the said respondents without further reference to the Bench.

Rule is made returnable within six weeks.

List this appeal after receipt of the service report of the notice issued to the respondent nos. 2(a), 2(b), 3(a) and 3(b).

(ANIL KUMAR CHOUDHARY, J.)

Smita/-