

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Appellate Jurisdiction)
S. A. No. 368 of 2004

.....
Jugeshwar Mishra & Others Appellants
Versus
Tohan Baraik & Others Respondents

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

.....
For the Appellants : Mr. Vikash Kishore Prasad, Advocate.
For the Respondents : Mr. Anil Kumar Ganjhu, Advocate.
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15/18.02.2021

I.A. No.5541/2014 has been filed under Order XXII, Rule 3 read with Rule, 9 of CPC to substitute the legal heir of appellant no.1 namely, Jugeshwar Mishra, who died on 11.01.2014 leaving behind his widow namely, Saraswati Devi, four sons, namely, Dwarika Nath Mishra, Durga Nath Mishra, Kali Charan Mishra and Vijay Kumar Mishra and widow daughter namely, Sushila Devi, W/o Late Ram Gopal Debey and D/o Late Jugeshwar Mishra, who are resident of village – Bighima, P.O. and P.S.- Palkot, District – Gumla.

Learned counsel for the appellants has submitted that there is delay of 188 days in preferring the substitution petition bearing I.A. No.5541/2014 to substitute the legal heirs of appellant no.1 and for condonation of the same, I.A. No.5539/2014 has been preferred.

Learned counsel for the appellants has further submitted that proposed legal heirs of appellant no.1 has already filed Vakalatnama and as such, they may be substituted in the place of appellant no.1 as :-

Appellant no. 1(a), Saraswati Devi, Widow of Late Jugeshwar Mishra.

Appellant no. 1(b), Dwarika Nath Mishra, son of Late Jugeshwar Mishra

Appellant no. 1(c), Durga Nath Mishra, son of Late Jugeshwar Mishra.

Appellant no. 1(d), Kali Charan Mishra, son of Late Jugeshwar Mishra.

Appellant no. 1(e) Vijay Kumar Mishra, son of Late Jugeshwar Mishra.

Appellant no. 1(f), Sushila Devi, W/o Late Ram Gopal Dubey, D/o Late Jugeshwar Mishra.

Learned counsel for the appellants has submitted that copy has already been served upon the contesting respondents and they have filed rejoinder, as such, delay may be condoned.

Learned counsel for the respondents, Mr. Anil Kumar Ganjhu has opposed the prayer and has submitted that there is a delay of 188 days in preferring the substitution petition and copy of death certificate has not been brought on record, as such, substitution may not be allowed.

After hearing the learned counsel for the parties, looking into fact and circumstances, the abatement is set aside and delay in filing the substitution petition is hereby condoned and substitution of heirs and legal representatives of appellant no.1 is allowed.

Accordingly, both I.As. No.5541/2014 and 5539/2014 are allowed.

Let office is directed to substitute heirs and legal representatives the appellant no.1 as mentioned above in I.A. No.5541/2014.

I.A. No.2730/2004

Learned counsel for the appellants has submitted that I.A. No.2730/2004 has been filed under Order XLI Rule 5 CPC on 08.12.2004 and the appeal was subsequently admitted on 30.09.2005.

I.A. No.2730/2004 was taken up vide order dated 30.09.2005 whereby notice has been issued to the respondents and interim order was passed that proceeding in execution Case No.05/2004 pending in the Court of learned Munsif, Gumla shall be kept in abeyance. Subsequent thereto another I.A. No.5540/2014 has been filed on behalf of appellants under Section 151 of CPC to restrain the respondents including Ramakant Tiwari, the Officer In-charge, Palkot Thana no.64 to interfere with the appellants peaceful possession over the lands of Khata no.135, Plot no.4073 having an area of 70 decimals. as such, interim order, which has been granted vide order dated 30.09.2005 and extended vide order dated 29.11.2005 may be made absolute.

Learned counsel for the respondents, Mr. Anil Kumar Ganjhu has submitted that copy of I.A. No.5540/2014 has not been served upon him, as such, copy may be served and four weeks' time may be granted to file counter affidavit in both the matters.

Considering the same, learned counsel for the appellants is directed to serve copy of I.A. No.5540/2014 within a period of two weeks and learned counsel for the respondents is directed to file counter affidavit in

I.A. No.2730/2004 and I.A. No.5540/2014 within a period of four weeks thereafter.

Put up this case after filing of counter affidavit.

Learned counsel for the appellants has submitted that respondent no.2 has already died and interlocutory application, has already been filed, but office is not placing the same.

Office is directed to check and verify and proceed in accordance with law.

(Kailash Prasad Deo, J.)

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