

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 156 of 2012

Basu Pandit			Appellant
	Versus		
Govind Pandit			 Respondents
	With		
	S.A. No. 110 of 2012		
Anand Pandit			Appellant
	Versus		
Govind Pandit			 Respondents

CORAM : HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellants	: Mr. Ayush Aditya, Advocate (in S.A. No.156/12)
	Mr. A.K. Pathak, Advocate (in S.A. No.110/12)

For the respondent	:Mr. O.P. Singh , Advocate(in S.A. No.156/12)
	Mr. Ayush Aditya, Advocate(in S.A. No.110/12)

05 / 29.10.2021 **S.A. No. 110 of 2012**

In view of the S.R. the notice is declared to be validly served on respondent Nos.1,2,3,4,5,6,7 and 11 to 13 but the office is silent about respondent nos. 8,9, and 10.

I.A. Nos. 375,369,371,373, &8318/ 2018 (In S.A. No.110/2012)

These interlocutory applications have been filed under Order XXII Rule 3, 4, 9 & 11 of the CPC and Section 5 of the Limitation Act for condoning the delay of 795 & 10days in filing the appeal and for substitution of legal heirs of the appellant no.6, namely Sushtomani Devi and respondent no.4 namely Kanhai Pandit, who died during the pendency of present appeal 10.08.2015 and in the month of December, 2013 respectively leaving behind their legal heirs and representatives whose descriptions have been mentioned in respective paragraphs of present interlocutory applications along with I.As. for setting aside the abatement against respondent no. 4 and appellant no.6.

It is submitted by the learned counsel that this is an old case in which the second appeals were filed in the year 2012. The reasons of delay has been stated by separate condonation petition in I.A. No.369/18 and I.A. No.373/2018 wherein it has been mentioned that

second appeal was filed on 27th August 2012 and over 5 years there was no frequent development in the case and notice was issued to the respondents thereafter the case was listed for orders. That there was communication gap between the appellant and learned counsel resulting in delay in filing the substitution petition. It is submitted that no informatory petition was filed

It is further submitted that the delay in filing the appeal is not deliberate or intentional.

It is submitted that no informatory application has been filed under Order 22 Rule 10A CPC.

Learned counsel for the respondent has not raised any objection.

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 no.4 and appellant no.6, who died during the pendency of present appeal leaving behind their legal heirs and representatives whose descriptions has been mentioned in respective paragraph, is allowed to be substituted in place of the deceased respondent No.4.

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 is set aside and substitution petitions are allowed.

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

I.A. Nos. 375,369,371,373, &8318/ 2018 (In S.A. No.110/2012) stands allowed.

The appellants are directed to serve notice on the substituted legal heirs under registered cover with A/d as well as ordinary process for which requisites must be filed within four weeks’.

I.A. No. 6592 of 2015 (In S.A. no.156/2012)

This interlocutory application has been filed under Order XXII Rule 4 read with Section 151 of the CPC for substitution of legal heirs of the deceased respondent no.8 namely Sushtomani Devi who died during the pendency of present appeal on 11.09.15 leaving behind her legal heirs and representatives whose descriptions have been mentioned in para-2 of the present interlocutory application.

Learned counsel for the appellants has submitted that the instant petition has been filed within time.

Learned counsel for the respondents has not raised any objection.

Having heard the learned counsel for the parties and for the reasons stated in the present interlocutory application, the legal heirs/representatives of the deceased respondent no.8 who died during the pendency of present appeal leaving behind her legal heirs and representatives whose descriptions have been mentioned in para-2, is allowed to be substituted in place of the deceased respondent No.8.

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.

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

The appellants are directed to serve notice on the substituted legal heirs under registered cover with A/d as well as ordinary process for which requisites must be filed within four weeks’.

(GAUTAM KUMAR CHOUDHARY, J.)