



IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No. 129 of 2017

Narayan Debata

.....

Appellant

Represented by
Mr. S.K. Mishra, Sr. Adv.

-Versus-

**Babuli @ Ramesh Chandra
Mishra & Ors.**

.....

Respondent

Represented by

**CORAM:
THE HON'BLE MR. JUSTICE SASHIKANTA MISHRA**

**ORDER
30.09.2024**

I.A. No. 363 of 2021

**Order No.
05.**

1. This matter is taken up through hybrid mode.
2. This is an application for substitution of the appellant, Narayan Debata, who is said to have died on 08.06.2021 leaving behind the present petitioners as his legal heirs.
3. It is stated that right to sue survives of the legal heirs of the deposed appellant.
4. Considering the submissions as above and taking note of the fact that the application for substitution is in time, the same is allowed.
5. The L.Rs. of the deceased appellant as mentioned in the cause title of this application be impleaded as appellant Nos.1 to 4 striking out the name of the deceased appellant.

**(Sashikanta Mishra)
Judge**



I.A. No. 95 of 2021 &
I.A. No. 96 of 2021

Order No.
06.

1. These are applications for substitution of legal heirs of respondent no.1, who is said to have died on 05.10.2020 and for setting aside the order of abatement of the appeal as against him.
2. It is submitted that the appeal had abated for non-taking of steps for substitution within the stipulated period but the petition has been filed within the extended period of limitation. It is further stated that the right to sue survives against the deceased respondent No.1.
3. In such view of the matter, the applications are allowed. The persons named in the Schedule to the I.A. No. 95 of 2021 be impleaded as respondent Nos. 1(a) & 1(b).
4. Issue notice to the newly added respondents by speed post fixing a short returnable date. Requisites for which shall be filed within three working days.
5. It shall be open to the newly added parties to make their submission with regard to the substitution, if necessary.
6. The order of abatement of the appeal is set aside.
7. I.As. are disposed of.

(Sashikanta Mishra)
Judge

RSA No. 129 of 2017

Order No.
07.

1. The appeal is taken up for admission.
2. Heard Mr. S.K. Mishra, learned Senior Counsel with Mr. S.R. Behera appearing for the appellant. Perused the impugned judgments.
3. Considering the submission and the grounds raised, the second appeal is admitted on the following substantial questions of law.



“For that when there should be separate decrees in respect of both the suits as well as counter claim in terms of Order 20 Rule 6 and 19 read with Order 8 Rule 6(A)(2)(4) of C.P.C. and further when law is well settled that the counter claim will be treated as cross suit and there should be a separate decree in respect of the same.”

4. Issue notice to the respondents by speed post fixing a short returnable date. Requisites be filed within three working days.
5. Call for the L.C.R.
6. List this matter on 25th October, 2024.

(Sashikanta Mishra)
Judge

I.A. No. 1129 of 2024

Order No.
08.

1. Issue notice as above.
2. In the meantime, it shall be open to the appellant to move necessary application seeking adjournment of RFA No.31 of 2010 pending before learned Additional District Judge, Dhenkanal, which shall be considered by the Court below having regard to the fact that a part of the decree is under challenge in the present Second Appeal.
3. The I.A. be listed for orders on 25th October, 2024.
4. Issue urgent certified copy as per Rules.

(Sashikanta Mishra)
Judge

A.K. Rana