



IN THE HIGH COURT OF ORISSA AT CUTTACK
S.A. No.175 of 2001

***Bichhanda Giri (Dead) and
another***

....

Appellant(s)
Represented by
Mr.M.Faradish,Advocate.
appearing on behalf of
Mr.S.D.Das,Sr.Advocate.

-versus-

Bikartan Giri & others

....

Respondent(s)
Represented by
Mr.B.Das,Advocate.
Appearing on behalf of
Mr.N.C.Pati,Advocate.

CORAM:
JUSTICE ANANDA CHANDRA BEHERA

Order No.
23.

ORDER
06.08.2024
Misc. Case No.28 of 2015

1. This matter is taken up through hybrid arrangement (virtual/physical) mode.
2. This Misc. Case has been filed by the third party petitioner praying for an order of his substitution in place of deceased appellant No.1(a) as appellant No.1(a)(i) on the strength of a registered Will in respect of the suit properties executed by the deceased appellant No.1(a) in his favour on dated 21.11.2009 during the pendency of the second appeal.
3. The law concerning the substitution on the strength of a Will executed by the deceased like appellant No.1(a) Samadari Giri has already been clarified by the Apex Court in the ratio of the following decisions:-



(i) AIR 1962 SC 232—The Andhra Bank Ltd. Vrs. Srinivasan and ors.—Person who in law represents the estate of deceased person. Estate does not mean the whole of the estate. Even a legatee who obtains only a part of the estate of the deceased under a Will can be said to represent his estate and is therefore a legal representative of the deceased, who had executed the Will.

(ii) 1993 AIR SCW 1439 & (1993) 2 SCC 507—Chiranjilal Shrilal Goenka (deceased) Vrs. Jasjit Singh and others—The term legal representative is wide and inclusive and not confined to heirs alone. The executors, administrators, assigns or persons acquiring interest by devolution under Order 22, Rule 10 or legatees under a Will are legal representatives.

4. So, applying principles of law enunciated in the ratio of the aforesaid decisions, when a third party petitioner has prayed for his substitution in place of the appellant No.1(a) on the strength of registered Will dated 21.11.2009 executed by the deceased appellant No.1(a) in his favour in respect of the suit properties, then by applying the principles of law enunciated by the Apex Court in the ratio of the aforesaid decisions, there is no justification under law to disallow the prayer for substitution of the third party petitioner Pradeep Kumar Giri in place of the deceased appellant No.1(a).

5. Hence, the above Misc. Case is allowed.

6. The third party petitioner Pradeep Kumar Giri be substituted in the place of the deceased appellant No.1(a) as appellant No.1(a)(i).

7. Registry is directed to incorporate the name of the third party petitioner i.e. Pradeep Kumar Giri in place of the deceased appellant No.1(a) after making an endorsement against the name of the appellant No.1(a) as dead in Red Ink.



8. Learned counsel for the appellant is directed to file the consolidated cause title of the appeal memo incorporating the name of the third party petitioner Pradeep Kumar Giri as appellant No.1(a)(i) after serving copy thereof on the learned counsel for the respondents.

9. Accordingly, the above Misc. Case is disposed of finally.

(A.C. Behera)
Judge

24. **Misc. Case No.115 of 2015**

1. This Misc. Case filed under Order 39 Rule 1 & 2 of the CPC, 1908 by the respondents against the Pradeep Kumar Giri before his impletion is not entertainable under law.

2. Hence, the above Misc. Case is dismissed being infructuous giving liberty to the respondents to file fresh application for the same after impleation of Pradeep Kumar Giri, if they desire to do so.

(A.C. Behera)
Judge

25. **S.A. No.175 of 2001**

1. List this matter on 18.09.2024.

(A.C. Behera)
Judge

Utkalika