



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRP No.31 of 2022

Hemabati Patel and others ***Petitioners***

Mr. Amit Prasad Bose, Advocate

-versus-

Kanchan Naik and others ***Opposite Parties***

Mr. Sambhucharan Nath Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

Order No.

09.

ORDER

03.10.2024

I.A. Nos.48 of 2024, 49 of 2024 and 50 of 2024

This matter is taken up through Hybrid Mode.

2. Mr. Amit Prasad Bose, learned counsel appearing for the petitioners submitted that he has filed three Interlocutory Applications bearing I.A. No.48 of 2024 for substitution of the deceased opposite party no.2, which is under Order-XXII, Rule-4 of the Code of Civil Procedure, I.A. No.49 of 2024 for setting aside the abatement, which is under Order-XXII, Rule-9 of the Code of Civil Procedure of the said Court and I.A. No.50 of 2024 for condonation of delay in filing this civil revision petition under Section 5 of the limitation Act.

2.1. He has further submitted that the fact of death of opposite party no.2 could come to knowledge of the petitioner on 18.07.2024 when the present matter was listed for hearing before this Court. On the said date, the docket note in the cause list depicted that notice could not be served on the opposite party no.2 due to death.



Immediately, thereafter, he has taken steps to file these three applications on 26.07.2024.

3. Mr. Sambhucharan Nath Sharma, learned counsel appearing for the opposite party nos.2(a) and (b), who are the legal heirs of the original opposite party no.2, stated to be dead on 02.03.2023, in objection to the aforesaid Interlocutory Applications, submitted that opposite party no.2 belongs to the same village where the petitioner also resides. Therefore, he contended that the fact of death of the opposite party no.2 is presumed to be within the knowledge of the petitioner.

4. As conceded by the learned counsel for the parties, the suit before the learned Civil Judge (Senior Division), Jharsuguda is for partition, injunction and other ancillary reliefs. It is also brought to the notice of this Court that opposite party nos.1 and 2 were plaintiffs in the trial Court and the opposite party no.2 since dead has not been substituted as on date in the suit.

5. Considering the aforesaid facts as brought to the notice of this Court, it is deemed expedient to allow the petition being I.A. No.50 of 2024 by condoning delay in filing the petition for substitution of deceased opposite party no.2 as well as the petition for setting aside of abatement.

6. Accordingly, this Court by condoning the delay in filing the petition being I.A. No. 48 of 2024 for substitution of deceased opposite party no.2, allows the petitioner to substitute legal heirs of deceased opposite party no.2 as opposite party nos.2(a) and 2(b) in place of opposite party no.2.



7. As a consequence of condonation of delay and allowing the petition being I.A. No.50 of 2024 and I.A. No.49 of 2024 are also allowed.

8. It is needless to observe that since Mr. Sambhucharan Nath Sharma, learned counsel has already put in appearance on behalf of the legal heirs of the opposite party no.2, he may be served copy of revision petition to proceed with the hearing of the CRP.

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9. It is submitted by Mr. Amit Prasad Bose, learned counsel appearing for the petitioner that he has already served copy of the Civil Revision Petition on Sri Sambhu Charan Nath Sharma, learned counsel appearing for legal heirs of opposite party no.2, to which the latter has conceded.

10. List this matter on 21.11.2024.

11. Interim order passed earlier shall continue till the next date.

(M.S. Raman)
Judge

Suchitra

Signature Not Verified

Digitally Signed
Signed by: LAXMIKANT MOHAPATRA
Designation: Senior Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 03-Oct-2024 18:45:47

