



IN THE HIGH COURT OF ORISSA AT CUTTACK

FAONo. 473 of 2023

CNR No. ODHCO10849022023

Bhagyaraj Mahana

.....

Appellant

Mr. P.K. Satapathy, Advocate

-versus-

Hemanta Kumar Mahana & Ors.

.....

Respondents

Mr. P.K. Jena, Advocate

CORAM:

THE HON'BLE MR. JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

07.08.2026

Order No.06

1. This matter is taken up through hybrid mode.
2. Heard Mr. P.K. Satapathy, learned counsel appearing for the Appellant and Mr. P.K. Jena, learned counsel appearing for the Respondents.
3. Learned counsel appearing for the Appellant contended that seeking probate of the WILL, the present Appellant filed Probate Misc. Case No. 20 of 2017 in the court of learned District Judge, Balasore. In the said Probate Proceeding, the present Respondents were impleaded as Opp. Parties. However, during pendency of the probate proceeding, when O.P. No. 6 died and no substitution was made, learned court below on the ground of non-substitution of the legal heirs of deceased O.P. No. 6 in that probate Misc. Case, held the entire probate proceeding to have been abated and dismissed the application vide the impugned order dtd.10.08.2023.



3.1. It is contended that on the death of O.P. No. 6 in the probate proceeding, if no substitution was made, the proceeding should have been abated as against O.P. No. 6, instead of abating the entire proceeding with dismissal of the matter vide the impugned order dtd.10.08.2023. It is accordingly contended that the impugned order needs interference of this Court and the matter be remitted to the learned court below by giving liberty to the Petitioner to file necessary application for substitution of the deceased O.P. No. 6 in the said proceeding.

4. Learned counsel appearing for the Respondents also fairly contended that he has no objection, if the matter will be remitted for fresh disposal by allowing the Appellant to make necessary application for substitution of deceased O.P. No. 6 in the probate proceeding.

5. Having heard learned counsel appearing for the Parties and considering the submission made, it is found that in the probate proceeding in probate Misc. Case No. 20 of 2017 so filed by the present Appellant, seven (7) Opp. Parties were impleaded as Opp. Parties. During pendency of the probate proceeding, O.P. No. 6 when died and if no substitution was made, it is the view of this Court that the proceeding should have been abated as against O.P. No. 6. But since the entire proceeding on that ground was treated as having become abated and the proceeding was dismissed, this Court is of the view that the impugned order has been passed without application of mind being an illegal order.



5.1. Therefore, this Court while quashing order dtd.10.08.2023 so passed by the learned District Judge, Balasore in Probate Misc. Case No. 20 of 2017, remits the matter to the said court for fresh disposal. It is however observed that steps for substitution of deceased O.P. No. 6 be taken by the present Appellant (Petitioner in Probate Misc. Case No. 20 of 2017) by filing appropriate application along with a copy of this order before the learned District Judge, Balasore. On filing of such application, necessary order be passed on the question of substitution in accordance with law and learned District Judge, Balasore is to decide the matter on merit and by giving due opportunity of hearing to all concerned.

6. The appeal accordingly stands disposed of.

(BIRAJA PRASANNA SATAPATHY)
Judge

Sneha

Signature Not Verified

Digitally Signed
Signed by: SNEHANJALI PARIDA
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 11-Aug-2026 19:00:40

