

SUPR EME COUR T OF I ND I A
RECORD OF PROCEEDINGS
BEFORE THE REGISTRAR S.G. SHAH

Petition(s) for Special Leave to Appeal (Civil) No(s).6717/2005

(From the judgement and order dated 17/08/2004 in FA No. 3/1977 of
The HIGH COURT OF ORISSA AT CUTTACK)

SASHI GIRI @ SASHIBHUSAN GIRI & ORS. Petitioner(s)

VERSUS

DASARATHA GIRI & ORS. Respondent(s)
(With prayer for interim relief and office report)

Date: 25/07/2011 This Petition was called on for hearing today.

For Petitioner(s)
Mr. V.K. Monga, Adv.
For Respondent(s)
Mr. Y. Prabhakara Rao, Adv.

UPON hearing counsel the Court made the following
ORDER

Nobody is present. Registry is repeatedly directed not to list applications before any court which are defective in any manner such applications are to be treated as not filed at all. Copy of this order be forwarded to Registrar (Judl.) for giving proper instructions to all concerned.

If petitioners fails to take appropriate steps for respondents whose status is changed in prescribed time of limitation, Registry has to list the matter before Hon'ble Judge in Chambers for appropriate orders for abatement without waiting for application and without inviting for completion.

Registry is directed to refer [2010] 9 SCR 674 , date of judgment-5.8.2010, C.A. No. 6291/2010 titled as Budh Ram & Ors Vs. Bansi & Ors and [2010] 8 SCR 597, date of judgment 8.7.2010, C.A. No.1166/2006 titled as Balwant Singh (Dead) Vs. Jagdish

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Item No. 6

Singh & Ors., whereby Hon'ble Court has recently confirmed the legal position which is otherwise well settled in the Code of Civil Procedure that what is to be done when any litigant expires and if proper steps are not taken within the prescribed period of limitation to bring the legal heirs of such deceased litigant by the concerned persons, by legal heirs of such deceased litigants or any litigant on record. In such case, when there is a direct judgment by the Hon'ble Court stating

" Abatement takes place automatically by application of law without any order of the court. Setting aside of abatement can be sought once the suit stands abated. Abatement in fact results in denial to hearing of the case on merits. Order XXII Rule 1 CPC deals with the question of abatement on the death of the plaintiff or of the defendant in a Civil Suit. Order XXII Rule 2 relates to procedure where one of the several plaintiffs of the defendants die and the right to sue survives. Order XXII Rule 3 CPC deals with procedure in case of death of one of the several plaintiffs or or the sole plaintiff. Order XXII Rule 4 CPC, however, deals with procedure in case of death of one of the several defendants or or the sole defendants Sub-clause(3) of Rule 4 makes it crystal clear that where within the time limited by law, no application is made under sub-Rule 1, the suit shall abate as against the deceased defendant.

Item No. 6

In Para 13 it is stated that provisions of Order XXII Rule 4(4) CPC, provide that in case, the deceased defendant did not contest the suit and did not file a counter affidavit, the substitution may not be warranted."

Therefore, registry is specifically advised and directed not to address letters as being done in the present case inviting the litigant for filing vakalatnama or for taking some steps.

It is none of the business of the registry in absence of any provision of law and specific direction to that effect by the competent authority, to invite the litigant and to address letters to the Advocates for doing any particular activity in the matter.

Registry shall list such matters before the Hon'ble Judge in Chambers for appropriate formal order regarding abatement when litigants fail to bring on record the legal heirs of deceased respondent within prescribed period of limitation.

(S.G. Shah)
Registrar

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