
(1982) 03 PAT CK 0002
In the Patna High Court
Case No : Civil Revision No. 183 of 1975

Badri Narain Prasad Sah and Others	Vs	APPELLANT
Bansidhar Prasad and Others		RESPONDENT

Date of Decision : 15-03-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, Order 22 Rule 4

Citation : AIR 1982 Patna 138 : (1982) 30 BLJR 428 : (1982) PLJR 283

Hon'ble Judges : B.P. Jha, J

Bench : Single Bench

Advocate : Kailash Roy and Mukteshwar Singh, for the Appellant; Shreenath Singh, K.N. Choubey, Ripudaman Pd. Sinha and S.C. Debey, (for Nos. 1 to 4) and Upendra Prasad, (for Nos. 7 and 11 to 14), for the Respondent

Final Decision : Dismissed

Judgement

B.P. Jha, J.—This Civil Revision has been filed by the defendants against an order dated 6-12-1974.

2. This matter arises out of an abatement matter. Defendant No. 3 Kedar prasad Sah died on 9-2-1970 and his three sons, defendants 10 to 12 were already on the record of the suit. It is stated that his widow and daughters were not brought on the record within the period of limitation. In this connection the Supreme Court held in Mahabir Prasad Vs. Jage Ram and Others, that the question of abatement does not arise in a case where some of the heirs of the de-i ceased are already on the record. It is necessary to quote paragraph 6 of the judgment of the Supreme Court which runs as follows:

"Even on the alternative ground that Mahabir Prasad being one of the heirs of Saroj Devi there can be no abatement merely because no formal application for showing Mahabir Prasad as an heir and legal representative of Saroj Devi was made. Where in a proceeding a party dies and one of the legal representatives is already on the record in another capacity, it is only necessary that he should be

described by an appropriate application made in that behalf that he is also on the record, as an heir and legal representative. Even if there are other heirs and legal representatives and no application for impleading them is made within the period of limitation prescribed by the Limitation Act the proceeding will not abate. On that ground also the order passed by the High Court cannot be sustained."

In a case of this type the appellants will file an application to that effect that the heirs of the deceased are already on the record. In the present case such application was filed before the trial Judge. It is a settled law that if some of the heirs of the deceased are already on the record then the question of limitation does not arise in bringing the other remaining heirs on the record. The view of the Supreme Court was also upheld in Harihar Prasad Singh and Others Vs. Balmiki Prasad Singh and Others, . (See the last portion of paragraph 34 of the judgment). Relying on the two decisions, I hold that the question of abatement does not arise in the present case and the order passed by the court below is a correct one.

3. I must say that the learned Subordinate Judge, Janki Prasad Sinha, has written a very good order in a short compass in an intelligent manner.

4. In the result, the petition is dismissed but without costs.