

(1947) 03 PAT CK 0015
In the Patna High Court

Balgajan Rai and Others

APPELLANT

Vs

Sukhu Rai and Others

RESPONDENT

Date of Decision : 11-03-1947

Acts Referred:

Citation : AIR 1948 Patna 288

Hon'ble Judges : Shearer, J;Reuben, J

Bench : Full Bench

Judgement

Shearer, J.—This second appeal arises out of a suit instituted under Order 21, Rule 63, Civil P.C. A decree for money was obtained against the three sons of one Bechu Rai, and in execution of that decree certain property was attached. Bechu Rai died in or about 1917, and his father, Lakhi Rai, who survived him, then executed a deed or deeds of gift, conveying certain property to two of his three sons. This deed, or these deeds, of gift apparently contained a recital that the two sons were illegitimate. The third, and youngest son Sukhu Rai, was then a mere infant and no deed of gift in his favour was executed. One Ohhatrapati Eai put in an objection under Order 21, Rule 58, Civil P.C., asserting that Sukhu Rai was also an illegitimate son of Bechu Rai and that, on the death of Lakhi Rai some of the property which had been attached devolved on himself and some other persons. The objection was dismissed and Chhatrapati Rai then instituted a suit which was decreed. During the pendency of the suit, Chhatrapati Rai died and one Earn Chandra Rai and ten other persons were substituted as his legal representatives. The suit was decreed, but on appeal the decree was set aside, the learned Subordinate Judge being of opinion that Sukhu Rai was a legitimate son of Bechu Rai. During the pendency of the appeal Ramchandra Rai died, leaving a widow and some minor sons. No steps were taken by the appellant, Sukhu Rai, to bring these persons on the record, and it is now contended that in consequence the appeal abated, Were the widow and the minor sons of Ramchandrar Rai the legal representatives of the plaintiff in the suit Chhatrapati Rai? No authority on the point was cited, and I have myself been unable to discover any except Ghamandi Lal v. Amir Begam (94) 16 All. 211 in which

however, the question that arose was a very different one. Assuming, however, that on the death of Lakhi Rai certain property of his devolved on Chhatrapati Rai, and that, on the death of Chhatrapati Rai some portion of that property" devolved on Ramehendra Rai, and that, on Ramchandra Rai's death, it devolved in turn on his widow and minor sons, then, I am inclined to think that the widow "and the minor sons could claim to be the legal representatives of Chhatrapati Rai, and, if they had asked to be brought on the record when Ramchandra Rai died, the application would have had to be allowed. It does not, however, by any means follow that the omission to bring them on the record necessarily worked an abatement of the appeal.

2. It is well settled that when a party to a suit dies, leaving a number of persons as his legal representatives, it is desirable that all such persons should be substituted in his place. It is, however, equally well settled that, if through some oversight or other, some of such persons are brought on the record and others are not, the estate is fully represented by those who are; those who are not may subsequently apply to be brought on the record, but there is no abatement: *Shib Dutta Singh v. Karim Bakhsh* AIR 1925 Pat. 551. If, therefore, Ramchandra Rai had never been substituted, in place of Chhatrapati Rai, the other persons who were substituted could have maintained the suit and the decree would have been binding against Ramchandra Rai. Can it make any difference that he was brought on the record and that, when he died, his widow and minor sons were not? If Ramchandra Rai had predeceased Chhatrapati Rai, then the omission to substitute his widow and minor sons as the legal representatives of Chhatrapati Rai would have been quite immaterial. The Chief Court of kind, differing from this Court and most of the other High Courts in India, have apparently taken the view that, when a party dies leaving several legal representatives, all these legal representatives must be substituted in his place. It is to be observed that the Chief Court has also held that, when a defendant dies and some of his legal representatives are brought on the record, the other defendants are estopped from asserting at a later stage that other persons also should have been substituted in his place; *Sahijram v. Bhambhomal* AIR 1930 Sind 147. The Calcutta High Court similarly took the view that, in a mortgage suit in which a certain person had been substituted as the legal representative of a deceased defendant, the other defendants were estopped from contending on appeal that the deceased had left other legal representatives who should also have been substituted in his place; *Umesh Chandra Mondal Vs. Hemanga Chandra Maity*, . The Calcutta High Court followed a decision of the Madras High Court in which it had been held that the defendants were estopped from contending that a person who had been substituted as the legal representative of a deceased plaintiff did not fully represent his estate; *Meenatchi Achi v. Ananthanarayana Ayyar* (03) 26 Mad. 224. If the principle of equitable estoppel can be applied in such cases as these, it seems to me that a fortiori it can be applied in the present case. The appellants were permitted by the trial Court to carry on the suit on the understanding that they and Earn Chandra Rai fully represented the estate of the

deceased plaintiff Chhatrapati Rai. If in consequence of the death of Ramchandra Rai, they, or any of them, were of opinion, that they no longer fully represented his estate, and that, in order to secure such full representation it was necessary to bring on the record the widow and the minor sons of Ramchandra Rai, they could and ought to have intimated this to the Court. Three of them, it may be observed, are the brothers of Ramchandra Rai, and apparently they and Ramchandra Rai were all members of one and the same joint family. It would amount to putting a premium on fraud to hold that they were entitled to conceal certain facts from the Court, and then, on the basis of these facts, to assert that there had been an abatement of the appeal.

3. In my opinion, there was not and could not be any abatement as, in spite of the death of Ramchandra Rai, the other respondents fully represented the estate of the deceased plaintiff, Chhatrapati Rai.

4. For these reasons, I would dismiss the appeal with costs.

Reuben, J.

I agree.