

(2003) 03 JH CK 0018
In the Jharkhand High Court
Case No : LPA No. 81 of 1992 (R)

Bhaiya Sarju Singh and Others	Vs	APPELLANT
Bhaiya Suresh Singh and Others		RESPONDENT

Date of Decision : 26-03-2003

Acts Referred:

Citation : (2003) 3 JCR 338

Hon'ble Judges : P.K. Balasubramanyan, C.J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : V.P. Singh, for the Appellant; Sudarshan Srivastava, for respondents 1 and 15, for the Respondent

Final Decision : Allowed

Judgement

1. These Interlocutory Applications are for substituting the legal representatives of deceased appellant No. 1 after deleting his name, and for condoning the delay in making the application, after setting aside the abatement, if any.
2. Appellant No. 1 is said to have died on 18.8.1996, The application for substitution (at flag-"A") was filed on 24.1.2003, i.e, more than six years after the death of appellant No.1. Obviously, the petitioners herein cannot take the plea that they were not aware of the death of their father. Hence, they have pleaded the other alternative, that they were not aware of the pendency of the Appeal. We are bound to look at the reason given, with some skepticism.
3. The aforesaid applications are opposed by the learned counsel for respondents 1 and 15 by submitting that the story put forward is not true.
4. Be that as it may, the instant Appeal is against a preliminary decree for partition and is pending for quite some time before this Court. In the circumstances, we are not satisfied that it would be just and proper to dismiss the Appeal as abated as against the legal representatives of deceased appellant No. 1. Making a liberal approach in this context, we find that sufficient cause has been made out by the petitioners herein for condoning the delay; but at the

same time we find that the petitioners should be put on terms for their absence of course in not taking step for a quite long time.

5. Hence, it is ordered that the application at flag-"B" will stand allowed, the delay in filing the substitution petition will stand condoned and the abatement will stand set aside and the application at flag "A" for substitution of the legal heirs of deceased appellant No. 1, will also stand allowed on deletion of the name of deceased appellant No. 1 from the cause title of the memorandum of Appeal on condition that the petitioners herein pay a cost of Rs. 500.00 (five hundred) to respondents 1 and 15 within a period of three weeks from today. The cost shall be tendered to learned counsel for respondents 1 and 15 and receipt in that behalf produced in Court. If the cost, as ordered above, is not paid within the time fixed, the above applications will stand dismissed without further reference to a Bench.

6. So far as IA No. 197 of 2003 (at flag "C") is concerned, learned counsel for the appellants seeks a week's time to make certain amendments therein. Let it be so done and the matter be placed thereafter.