
(2012) 06 JH CK 0020

In the Jharkhand High Court

Case No : Second Appeal No. 463 of 1990 (P)

Jhunia Mandalain and Another

APPELLANT

Vs

Lukman Panjiara and Others

RESPONDENT

Date of Decision : 14-06-2012

Acts Referred:

Citation : (2012) 06 JH CK 0020

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Advocate : Rajiv Sinha, for the Appellant; Rajiv Ranjan Mishra, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Mrs. Justice Jaya Roy

I.A. No. 2676 of 2009

1. The appellants have filed the instant application for substitution of the respondent Nos. 8, 9(a) and 10, who died during the pendency of this appeal. Counsel for the appellant has submitted that though the aforesaid three respondents died much earlier before the filing of the substitution petition, but he has submitted that the case was filed at Patna, and thereafter, it was transferred before this Court in 2007, and thereafter, when the counsel for the appellants asked the appellants to come to him to instruct him, he had come to know that the aforesaid three respondents died in the year 2006.

2. The counsel appearing for the respondents has submitted that the instant I.A. application for substitution of the legal representatives and heirs of the aforesaid respondents has been filed much after their death, therefore, this application should not be entertained and the appeal has already been abated for the same.

3. Considering the reasons given by the counsel appearing for the appellants and also considering the facts and circumstances of the case, I allow this

Interlocutory application and accordingly the legal representatives and heirs of the respondent No. 8 as mentioned in Para-4 of the I.A. application namely i) Katra Kapri, ii) Hari Kapri, iii) Badnaya Devi and iv) Kunti Devi, are hereby substituted in place of the said respondent No. 8.

4. The legal representative and heir of respondent No. 9(a), who died on 28.8.2005, as mentioned in Para -5 of the I.A. application namely Babita Devi, is hereby substituted in place of the said respondent No. 9(a).

5. The legal representatives and heirs of respondent No. 10-Kaleshwari Mandalain, who died on 26.4.1998 as mentioned in Para -6 namely i) Mudrika Devi (widow of Bachu Mandal, son of Kaleshwari Mandalain), ii) Ramakant Mandal, iii) Umesh Mandal (both sons of Bachu Mandal), iv) Basanti Devi and v) Kushmi Devi (daughters of late Bachu Mandal) are substituted in place of respondent No. 10.

6. Counsel appearing for the respondents undertakes to file the Vakalatnama on behalf of all the substituted legal representatives and heirs of the respondent nos. 8, 9(a) and 10, therefore, no notice is required to be issued to these substituted legal representatives and heirs of the aforesaid respondents.

7. The counsel appearing for the respondents is directed to file the Vakalatnama for the aforesaid substituted legal representatives and heirs of the aforesaid respondents within a period of one month from the date of this order.

8. With the aforesaid directions, the aforesaid I.A. No. 2676 of 2009 stands disposed of.

I.A.No. 1141 of 2010

9. The appellants has filed the instant I.A. application for substitution of the legal representatives and heirs of appellant No. 2 namely Uchit Mandal alias Ramavtar Mandal who died on 18.11.2009.

10. It is submitted that the said appellant No. 2 died living behind him the legal representatives and heirs namely Janki Devi(widow) and Kailash Kotwal and Anil Kotwal (sons).

11. Though the instant I.A. application has been filed after the expiry of the limitation period, but as the sufficient cause has been shown, I allow this I.A. application and the legal representatives and heirs of the appellant No. 2, as mentioned in the Para-4 of the I.A. application, namely i) Janki Devi(widow) ii) Kailash Kotwal and iii)Anil Kotwal (sons) are hereby substituted in place of the appellant No. 2.

12. Counsel for the appellant No. 2 has submitted that he has already filed the Vakalatnama on behalf of the aforesaid substituted legal representatives and heirs of the appellant No. 2.

13. It is also submitted that the appellant No. 1 died on 14.12.2001 living behind

her only son, who was on record as appellant No. 2, and now he is also dead and his heirs are substituted in this application today.

14. The aforesaid I.A. No. 1141 of 2010 stands disposed of accordingly.

I.A.No. 1154 of 2010

15. As sufficient cause has been shown by the counsel for the appellant, the delay in filing the substitution petition on behalf of the legal representatives and heirs of the deceased appellant No. 2, is hereby condoned.

16. Accordingly, the I.A. No. 1154 of 2010 stands disposed.

I.A.No. 897 of 2011

17. The appellants have filed the instant I.A. application for substitution of respondent No. 1 and 5 and deleting the name of the respondent No. 1 as both of them died at their native village. It is submitted that the respondent No. 1 died on 14.12.2001, but his legal representatives and heirs are already on record as respondent Nos. 2 and 3 in this appeal.

18. It is further submitted that the respondent No. 5 namely Kaushlaya Marikayan died in the month of June, 2004 leaving behind her husband Sukar Marik and two sons namely Tulsi Marik and Prabhu Marik.

19. Counsel appearing for the respondents has opposed as the I.A. application has been filed much after their death.

20. As sufficient reasons have been shown for not filing the substitution petition within the time prescribed, I allow this I.A. application and hereby substitute the legal representatives and heirs of respondent No. 5 as mentioned in Para -7, namely i) Sukar Marik and two sons namely ii) Tulsi Marik and iii) Prabhu Marik.

21. Counsel for the respondents undertakes to file Vakalatnama on behalf of the substituted legal representatives and heirs of the respondent No. 5 within one month from the date of this order.

22. I direct the office to delete the name of the respondent No. 1 from the memo of appeal as he died in the year 2001 and his legal representatives and heirs are already on record as respondent No. 2 and 3.

23. With the aforesaid directions the I.A. No. 897 of 2011 stands disposed of.

24. As all the I.A. applications for substitution of the deceased respondents have been filed much after the time prescribed for substitution and the counsel appearing for the respondent opposed vehemently, I direct the counsel for the appellants to pay the cost of Rs. 2,000/- (Two thousand) within one month and subject to this payment these I.A. applications are allowed. Counsel for the appellants will file the receipt of the same within the said period.