
(2009) 03 PAT CK 0040
In the Patna High Court
Case No : C.R. No. 308 of 2009

Kashi Nath Dubey and Others

APPELLANT

Vs

Shanti Pandey and Another

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Citation : (2009) 3 PLJR 555

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Manojeshwar Pd. Sinha, Ratan Kumar Sinha and Madhukar Pandey, for the Appellant;

Judgement

Dr. Ravi Ranjan, J.—Heard learned counsel for the petitioners. The defendants-petitioners are aggrieved by the order dated 30.1.2009 passed in Title Suit No. 319/2002, whereby the court below has allowed the petition dated 13.11.2006, filed by the opposite parties No. 1 & 2 by directing for expunging the name of the deceased-plaintiff, namely, Harihar Sharan Dubey and for substituting the names of opposite parties No. 1 & 2 in his place.

2. Learned counsel for the petitioners submits that after the death of the plaintiff, since no step for substitution was taken within the statutory period, the suit has abated. Further, since no prayer for setting aside abatement has been made, the aforesaid petitions ought to have been rejected by the court below.

3. I do not find any force in the submissions of the learned counsel for the petitioners inasmuch as such hyper-technicality should not come in the way of doing full justice. It would be apt to refer to a decision of the Supreme Court in this regard rendered in the case of K. Rudrappa Vs. Shivappa, . The relevant passage of aforesaid judgment is as under:--

"10. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed. The case of the appellant before the District Judge was that he was not aware of the pendency of the appeal filed by his father against

the order passed by the Tehsildar. The father of the appellant died in June, 1994 and the appellant came to know about the pendency of appeal somewhere in September, 1994 when he received a communication from the advocate engaged by his father. Immediately, therefore, he contacted the said Advocate, informed him regarding the death of his father and made an application. In such circumstances, in our opinion, the learned counsel for the appellant is right in submitting that a hyper-technical view ought not to have been taken by the District Court in rejecting the application inter alia observing that no prayer for setting aside abatement of appeal was made and there was also no prayer for condonation of delay. In any case, when separate applications were made, they ought to have been allowed. In our opinion, technical objections should not come in doing full and complete justice between the parties. In our considered opinion, the High Court ought to have set aside the order passed by the District Court and it ought to have granted the prayer of the appellant for bringing them on record as heirs and legal representatives of deceased Hanumanthappa and by directing the District Court to dispose of the appeal on its own merits. By not doing so, even the High Court has also not acted according to law."

4. In view of the aforesaid, I do not find any jurisdictional error or illegality in the impugned order dated 30.1.2009 warranting interference by this Court in its revisional jurisdiction. As a result, this Civil Revision is dismissed.