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**(2009) 03 CHH CK 0011**  
**In the Chhattisgarh High Court**  
**Case No : Second Appeal No. 570 of 2000**

Ku. Bode Kachh

APPELLANT

Vs

Abdul Rehman and Another

RESPONDENT

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**Date of Decision :** 27-03-2009

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 11, Order 22 Rule 4A

**Citation :** (2009) 2 CGLJ 305

**Hon'ble Judges :** T.P. Sharma, J

**Bench :** Division Bench

**Advocate :** Parag Kotecha, for the Appellant; H.S. Patel and Ajay Dwivedi, Dy. Govt. Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

T.P. Sharma, J.—By this appeal, the Appellant has challenged the legality and propriety of the judgment and decree dated 8.2.2000 passed by the Third Additional District Judge, Bastar at Jagdalpur, in Civil Appeal No. 62A/99, reversing the judgment and decree dated 7.10.99 passed by the First Civil-Judge Class-II, Jagdalpur, District Bastar, in Civil Suit No. 138-A/98.

2. Judgment and decree is challenged on the ground of following substantial questions of law:

- (i) When the Respondent No. 1 knew that the deceased Smt. Gagari Bai had a legal representative and this fact was admitted by him in examination in chief as well as in cross examination, whether he was competent to file an application like one he filed in Annexure-A/2 ?
- (ii) Whether the learned Additional District Judge could have brought the Court Reader on record in place of late Smt. Gagari Bai, when there is no such provision in Order 22 akin to Order 32, Code of Civil Procedure?
- (iii) Whether the learned Additional District Judge could have passed the

judgment and decree against the dead person i.e. Smt. Gagari Bai?

(iv) Whether the learned Additional District Judge could have set aside the well considered judgment and decree without hearing the Appellant and without bringing the Appellant on record?

3. I have heard learned Counsel for the parties and perused the judgments and decree and records of the Courts below.

4. This appeal has been admitted for consideration on following substantial questions of law formulated vide order dated 4.7.2000:

(i) Whether the lower appellate Court should have required the Respondent No. 1 to delete the name of Smt. Gagari Bai from the record when it was reported by the Respondent No. 1 himself that Smt. Gagari Bai had expired without leaving any legal representative?

(ii) Whether pursuant to the order dated 22.2.2000, the Court below should have shown its Reader as the Respondent No. 1 in the appeal before it?

(iii) Whether the lower appellate Court had power to appoint the Court Reader as a legal representative of the deceased Smt. Gagari Bai who was Respondent No. 1 in Civil Appeal No. 62-A/99 ?

5. Deceased Smt. Gagari Bai has filed the suit for declaration of title and for declaration of sale deed dated 15.10.1984 as void, bogus and not-binding upon her recovery/confirmation of possession of the suit house and injunction. The same was decreed by the First Civil Judge Class-II, Bastar at Jagdalpur. Against the said judgment and decree, present Respondent No. 1/defendent filed an appeal. Learned lower appellate Court has reversed the judgment and decree and has dismissed the suit filed on behalf of Gagari Bai. Reversal of the judgment and decree by the lower appellate Court is challenged by the daughter of original Plaintiff Gagari Bai mainly on the ground that during the pendency of the appeal, Gagari Bai died leaving her legal representative i.e. the present Appellant but the present Respondent No. 1 i.e. Appellant of the first appeal has failed to implead the present Appellant as a Respondent and decree has been passed against the dead person, even when especially the lower appellate Court has ordered to appoint Reader of the Court as a legal representative of the deceased Gagari Bai in accordance with Order XXII Rule 4A of the Code of Civil Procedure.

6. Record of the lower appellate Court reveals that Gagari Bai died and present Respondent No. 1 has filed an application under Order XXII Rule 4A read with Rule 11 of the CPC that Gagari Bai has died without leaving any legal representative, therefore, some officer of the Court be impleaded as a legal representative of the deceased Gagari Bai, which was allowed and Reader of the Court was appointed as a legal representative of the deceased Gagari Bai in accordance with Order XXII Rule 4A of the Code of Civil Procedure. Order XXII Rule 4A of the CPC empowers the Court for appointing the Administrator-General or an officer of the Court to represent the estate of the deceased died without

leaving any legal representative. Order XXII Rule 4A of the CPC reads thus,

4A. Procedure where there is no legal representative.-(1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court-

(a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.

The provisions of Order XXII Rule 4A of the CPC is applicable in appeal in accordance with Rule 11 of Order XXII of the Code of Civil Procedure.

7. Learned Counsel for the Appellant submits that the present Appellant is the daughter of the deceased Gagari Bai and she is legal representative to represent the estate of the deceased Gagari Bai but intentionally and willingly, the present Respondent No. 1 has not impleaded her as a party. Learned Counsel further submits that the present Respondent No. 1 has deposed in para-5 of his evidence dated 18.9.96 before the trial Court that at the time of the alleged contract of sale, deceased Gagari Bai and her daughter were present. Respondent No. 1 has also admitted in para-14 of his evidence dated 31.8.99 that Gagari Bai used to go to the house of her daughter which is sufficient for drawing inference that at the time of death of Gagari Bai, her daughter was alive who was competent to represent her estate but Respondent No. 1 has not made her as a legal representative and has informed the Court that Gagari Bai has died without leaving any legal representative. Learned Counsel next submits that the lower appellate Court was not competent to pass any decree against the dead person and such judgment and decree is not sustainable under the law.

8. On the other hand, learned Counsel for Respondent No. 1 supported the impugned judgment and decree.

9. Records of the Courts below reveals that Respondent No. 1 has examined himself twice and has admitted in his evidence that the deceased Gagari Bai was having one daughter. Admission of Respondent No. 1 in his evidence is sufficient to prove the fact that Gagari Bai has not died without leaving any legal

representative and the Court below has committed an illegality by not substituting her legal representative or even the Court Reader as her legal representative. The lower appellate Court was also not competent to appoint the Court Reader as a legal representative of the deceased during the life time of daughter of the deceased Gagari Bai.

10. Courts are required to be vigilant and causes in hearing of the case. Courts are not competent to pass the judgment and decree against the dead person. In this case, the Court below has appointed the Court Reader as legal representative of the deceased Gagari Bai but has passed the judgment and decree against the dead person i.e. Gagari Bai. The lower appellate Court has not perused the statement of the Appellant, which was sufficient for dismissal of the application for impleading the Court Reader as legal representative of the deceased Gagari Bai.

11. Consequently, substantial question No. 1 is decided as positive with a remark that Smt. Gagari Bai has not expired without leaving any legal representative. Question No. 2 is decided as positive with a remark that Smt. Gagari Bai has not expired without leaving any legal representative. Question No. 3 is also decided as positive with a remark that Smt. Gagari Bai has not expired without leaving any legal representative.

12. Smt. Gagari Bai died leaving surviving daughter present Appellant therefore, Court below was not competent to pass any judgment and decree without impleading her as a Respondent.

13. For the foregoing reasons and on the basis of finding upon the substantial questions of law, the judgment and decree passed in the appeal is not sustainable and the same is liable to be set aside and it is hereby set aside. The appeal is allowed. Case is remitted to the first appellate Court for decision afresh after affording on opportunity of hearing to the parties relating to impleadment of the legal representative of the deceased Gagari Bai as a party.

14. Parties shall bear their own cost.

Decree be drawn accordingly.