
(2013) 06 PAT CK 0036

In the Patna High Court

Case No : CWJC No. 2622 of 2000 and I.A. No. 6906 of 2012

Sunil Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-06-2013

Acts Referred:

Citation : (2014) 2 PLJR 101

Hon'ble Judges : Birendra Prasad Verma, J

Bench : Single Bench

Judgement

Birendra Prasad Verma, J.—In the present writ petition under Article 226 of the Constitution of India arising out of a consolidation proceeding under the provisions of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short "Consolidation Act"), respondent No. 5 Brijnandan Mahto is/was a contesting party. The impugned order dated 20.12.1999 (Annexure-2) passed in Revision Case No. 392 of 1985 by the respondent Deputy Director of Consolidation (HQ), Bihar, Patna, was in favour of the respondent No. 5 allowing his claim with respect to the lands under dispute. During the pendency of the main writ petition, the aforesaid respondent No. 5 died in February, 2008 leaving behind him his heirs and legal representatives, who inherited their legal rights with respect to the lands in dispute after death of aforesaid Brijnandan Mahto.

2. Interlocutory Application No. 6906 of 2012 has been filed on behalf of the petitioners before this Court on 10.10.2012 stating therein that during the pendency of main writ petition respondent No. 5 died in February, 2008 (specific date not disclosed), leaving behind him his heirs and legal representatives, who have been detailed in paragraph 3 of the aforesaid Interlocutory Application. Admittedly, the present Interlocutory Application has been filed seeking substitution of the heirs and legal representatives of the deceased respondent No. 5 after a long delay of 4 years 8 months (approximately).

3. An objection has been taken by the learned counsel appearing on behalf of the

respondent State of Bihar and its functionaries that in view of law laid down by the Hon''ble Apex Court in the case of Puran Singh and others Vs. State of Punjab and others, , the prayer for substitution made on behalf of the petitioners cannot be allowed at this stage, as the substitution petition has not been filed within a reasonable period of time and the heirs and legal representatives of deceased respondent No. 5 cannot be compelled to contest the claim, which due to inaction of the petitioners has become final.

4. Learned counsel appearing on behalf of the petitioners and learned counsel appearing on behalf of the respondent State of Bihar and its functionaries, both have placed reliance on the ratio laid down by the Hon''ble Apex Court in Puran Singh vs. State of Punjab (supra) (especially paragraph 12 of the judgment).

5. In order to appreciate the issues raised on behalf of the parties, it would be appropriate to reproduce paragraph 12 of the aforesaid judgment in Puran Singh vs. State of Punjab (supra), which reads as follows:--

As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it does not mean that the petitioner or the appellant in such writ petition or appeal can ignore the death of the respondent if the right to pursue remedy even after death of the respondent survives. After the death of the respondent it is incumbent on the part of the petitioner or the appellant to substitute the heirs of such respondent within a reasonable time. For purpose of holding as to what shall be a reasonable time, the High Court may take note of the period prescribed under Article 120 of the Limitation Act for substituting the heirs of the deceased defendant or the respondent. However, there is no question of automatic abatement of the writ proceedings. Even if an application is filed beyond 90 days of the death of such respondent, the Court can take into consideration the facts and circumstances of a particular case for purpose of condoning the delay in filing the application for substitution of the legal representative. This power has to be exercised on well-known and settled principles in respect of exercise of discretionary power by the High Court. If the High Court is satisfied that delay, if any, in substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representative and proceed with the hearing of the writ petition or the writ appeal, as the case may be. At the same time the High Court has to be conscious that after lapse of time a valuable right accrues to the legal representative of the deceased respondent and he should not be compelled to contest a claim which due to the inaction of the petitioner or the appellant has become final.

(Emphasis supplied)

6. It would be relevant to mention here that in Puran Singh vs. State of Punjab (supra) the facts of that case have been noticed in paragraph 2 of the said judgment, from perusal of which it is apparent that one Bir Singh, respondent No. 2 of that case, died on 9.12.1971 and steps for substitution were not taken

till 14.3.1975 by the petitioner. Therefore, learned single Judge of Punjab and Haryana High Court had dismissed the writ petition. In the said case, steps for substitution were not taken for a period of 3 years 3 months (approximately) and on that ground alone, the matter was not considered on merit and the writ petition was dismissed by the learned single Judge of Punjab and Haryana High Court. Letters Patent Appeal filed against the said order was also dismissed by a Division Bench with an observation that since the appellant did not take steps for bringing the legal representatives of deceased Bir Singh on record, therefore, the writ petition had abated. The Hon''ble Apex Court has laid down the principles in paragraph 12 of the aforesaid judgment, reproduced above, affirming the judgment of the learned single Judge as also the L.P.A. Court. The Hon''ble Apex Court has held that if death takes place of a party in a proceeding under Article 226 of the Constitution of India, then steps are required to be taken within a reasonable time for substitution of the heirs and legal representatives of the deceased.

7. A question arises as to what would be the reasonable time for taking steps for substitution. Article 120 of the Limitation Act, 1963 provides a period of 90 days for substitution of the legal representatives under the Code of Civil Procedure. It is true that the provisions of the CPC (in short "C.P.C.") cannot be strictly applied in a proceeding under Article 226 of the Constitution of India, in view of the provisions contained in Section 141-Explanation of the C.P.C. but benefits of the principles can be taken and analogy of the provisions of the C.P.C. can be drawn in a proceeding under Article 226 of the Constitution of India.

8. Coming once again to the provisions of the Limitation Act, this Court finds that under Article 137 a period of 3 years has been prescribed for filing any application for which no period of limitation has been provided. The period of 3 years is a long period. If death of a party takes place, then the petitioner/appellant of writ petition/writ Appeal/L.P.A. may not be required to file a substitution petition strictly within a period of 90 days, but he/she is required to take steps for substitution within a reasonable period of time. In the considered opinion of this Court, if the steps are not taken within a maximum period of 3 years, then the prayer for substitution cannot be allowed and the legal rights accrued to the heirs and legal representatives of a deceased respondent cannot be taken away in a mechanical manner and further they cannot be compelled to contest such proceeding, which has abated due to non-substitution within a reasonable period of time of 3 years.

9. For coming to the conclusion that a period of three years would be a reasonable maximum period of time for taking steps for substitution of the heirs and legal representatives of a deceased party, I am fortified by a judgment of a Division Bench of this Court (Coram: L.M. Sharma & Manoranjan Prasad, JJ.) in the case of Harakh Nath Singh vs. Lodha Singh (1978 B.B.C.J. 481). In that case the issue involved was that what would be the period of limitation for filing a substitution petition for substituting the heirs and legal representatives of a

deceased party in a Civil Revision application filed u/s 115 C.P.C. and further as to whether the provisions of Order 22 of the CPC apply and, therefore, whether in terms of Article 120 of the Limitation Act, 1963, a substitution petition is required to be filed within a period of ninety days. After considering large number of judgments, the Division Bench of our own High Court taking a cue from Article 137 of the Limitation Act came to a conclusion that the period of limitation for allowing the prayer for substitution would be three years, as the provisions of Order 22 of the CPC do not apply to a substitution application in civil revision applications filed u/s 115 of the Code. For better appreciation, I am tempted to quote Paragraph 13 of the aforesaid judgment handed down by the aforesaid Division Bench, which reads as follows:--

In the result it has to be held that the provisions of the Order 22 of the CPC do not apply to a substitution application in Civil Revision application filed u/s 115 of the Code. An order of substitution can be passed by the Court either u/s 146 or under its inherent powers and in both these cases the period of limitation would be three years under Article 137 of the Limitation Act. Since, the present application was filed within six months of the death of the opposite party, and on the very next day of the admission of the case, it is difficult to hold that the petitioners were guilty of such delay which should not be ignored in the Court's discretion.

10. Coming to the present case, this Court finds that respondent No. 5 had died in February, 2008 and a petition for substitution was filed on 10.10.2012 i.e. after about 4 years 8 months. In view of law laid down by the Hon'ble Apex Court in *Puran Singh vs. State of Punjab* (supra), and in view of discussions made above, it cannot be said that the petitioners have taken steps for substitution within a reasonable period of time. Therefore, in the considered opinion of this Court, the heirs and legal representatives of deceased respondent No. 5 cannot be compelled to contest a claim, which has become final in their favour due to inaction on the part of the petitioners.

11. In the result, the prayer for substitution made on behalf of the petitioners is rejected.

12. Interlocutory Application No. 6906 of 2012 stands dismissed. In view of rejection of the prayer for substitution of the heirs and legal representatives of deceased respondent No. 5, the present writ petition has become incompetent and cannot proceed further. Therefore, the main writ petition has to fail, and is, accordingly, dismissed. No costs.