

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE HON'BLE SHRI JUSTICE VIVEK AGARWAL
ON THE 28th OF NOVEMBER, 2022**

MISC. APPEAL No. 232 of 2004

BETWEEN:-

1. **SOBHARAM AGED 60 YEARS S/O ASHARAM SAHU**
2. **SURENDRA KUMAR SAHU S/O SOBHARAM SAHU,
AGED ABOUT 38 YEARS, VILLAGE CHHAPARA,
(MADHYA PRADESH)**
3. **MADHAV PRASAD SAHU S/O SHOBHRAM SAHU,
AGED ABOUT 31 YEARS, VILLAGE CHHAPARA,
(MADHYA PRADESH)**
4. **RAM KRISHNA SAHU S/O SHOBHRAM SAHU,
AGED ABOUT 22 YEARS, VILLAGE CHHAPARA,
(MADHYA PRADESH)**
5. **BHARAT KUMAR SAHU S/O SHOBHRAM SAHU,
AGED ABOUT 20 YEARS, VILLAGE CHHAPARA,
(MADHYA PRADESH)**
6. **SMT. SAROJ BAI W/O DINESH KU. SAHU,
AGED ABOUT 35 YEARS, BORDAI,
TAHSIL MULTAI, DISTRICT BETUL, M.P.
(MADHYA PRADESH)**
7. **SMT. VANDANA BAI W/O SANTOSH KU. SAHU,
AGED ABOUT 25 YEARS,
R/O AMARVADA, TAHSIL AMARVADA,
DISTRICT CHHINDWARA (M.P.) (MADHYA
PRADESH)**

.....APPELLANTS

(BY SHRI AKHILESH JAIN, ADVOCATE)

AND

1. **CHOL SINGH AGED ABOUT 34 YEARS
S/O DILLI SINGH (MADHYA PRADESH)**
2. **GHANSHYAM S/O DILLI SINGH,**

**AGED ABOUT 25 YEARS,
KHAKHARIA POST MACHI(PATAN)
TAHSIL LAKNNADOAN DISTRICT SEONI
(MADHYA PRADESH)**

3. **RAMESHWAR S/O DILLI SINGH, AGED ABOUT
23 YEARS,
KHAKHARIA POST MACHI(PATAN)TAHSIL
LAKNNADOAN
DISTRICT SEONI(MADHYA PRADESH)**
4. **JAGESHWAR S/O DILLI SINGH,
AGED ABOUT 21 YEARS,
KHAKHARIA POST MACHI(PATAN)
TAHSIL LAKNNADOAN
DISTRICT SEONI (MADHYA PRADESH)**
5. **SMT. SHANTI BAI W/O LATE SHRI DILIP SINGH,
AGED ABOUT 62 YEARS,
KHAKHARIAPOSTMACHI(PATAN)
TAHSILLAKNNADOANDISTRICTSEONIM.P.
(MADHYA PRADESH)**
6. **RAMPYARI BAI W/O CHHOTE ALIAS
RAMSEWAK SAHU,
AGED ABOUT 50 YEARS,
KHAKHARIAPOSTMACHI(PATAN)TAHSIL
LAKNNADOAN
DISTRICT SEONI (MADHYA PRADESH)**
7. **SMT TULSI BAI W/O PRAKASH SAHU,
AGED ABOUT 32 YEARS, VILLAGE AADEGOAN,
POST AADEGAON TAHSIL LAKHNADOAN
DISTRICT SEONI M.P. (MADHYA PRADESH)**
8. **SMT. RUKMANI BAI W/O RAM SAHU,
AGED ABOUT 30 YEARS, VILLAGE AADEGOAN
POST AADEGAON TAHSIL LAKHNADOAN
DISTRICT SEONI
(MADHYA PRADESH)**
9. **RADHA BAI W/O TEJLAL,
AGED ABOUT 34 YEARS, VILLAGE
DANGIDHANA,
TAHSIL AND DISTRICT NARSINGPUR
(MADHYA PRADESH)**
10. **HIMIYA BAI W/O PAIJANLAL,
AGED ABOUT 65 YEARS, CHHAPARA,
TAHSIL LAKHNADOAN (MADHYA PRADESH)**

(NONE)

.....RESPONDENTS

This appeal coming on for hearing this day, the court passed the following:

ORDER

This Miscellaneous appeal is filed by the plaintiffs being aggrieved of order dated 23/10/2003 passed by the learned Additional District Judge, Lakhnadon refusing to entertain an application under Order 22 Rule 9 C.P.C. read with Rule 11 and Section 5 of the Limitation Act dated 1/03/2000 on the ground that plaintiff Annobai who had filed appeal 96-A/98 died on 8/01/1999.

The application was filed on 17/04/1999 seeking substitution of legal representatives of the deceased plaintiff to be made a party. That application was dismissed vide order dated 20/12/1999 when the application under Order 22 Rule 9 and 11 read with Section 5 of the Limitation Act was filed on 1/03/2000 and the same has been dismissed by the learned Additional District Judge, Lakhnadon on the ground that since order dated 20th December, 1999 rejecting an application under Order 22 Rule 3 was not challenged, therefore, second application is not maintainable.

Reliance is placed on the judgment of the Supreme Court in the case of **Banwari Lal (dead) by L.Rs. and another Vs. Balbir Singh 2016(4) M.P.L.J. 248** wherein it is held that the provisions of order 22 are not penal in nature. It is a rule of procedure and substantial rights of parties cannot be defeated by pedantic approach by observing strict adherence to procedural aspects of law.

Placing reliance on the Constitution Bench judgment of the Supreme Court in **Sardar Amarjit Singh Kalra (Dead) by L.Rs. and others Vs. Pramod Gupta (Smt) (Dead) by L.Rs. and others (2003) 3 SCC 272**, the

Hon'ble Supreme Court observed as under:-

Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 of CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination into an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain in tact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the Khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in Jamabandhi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even de hors the cause for the delay in filing the applications keeping in view the serious manner

it would otherwise jeopardize an effective adjudication on merits, the rights of other remaining appellants for no fault of them. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttle the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bring on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of Court to do real, effective and substantial justice. Viewed in the light of the fact that each one of the appellants had an independent and distinct right of his own not inter-dependant upon the one or the other of the appellants, the dismissal of the appeals by the High Court in their entirety does not constitute a sound, reasonable or just and proper exercise of its powers. Even if it has to be viewed that they had a common interest, then the interests of justice would require the remaining other appellants being allowed to pursue the appeals for the benefit of those others, who are not before the Court also and not stultify the proceedings as a whole and non-suit the others, as well.

Taking these facts and the legal proposition on record, this court has no hesitation to hold that the Additional District Judge, Lakhnadon was clearly in error in appreciation of the provisions contained in Order 22 C.P.C. Therefore, the impugned order cannot be given a seal of approval and is set aside.

Both the applications under Order 22 Rule 3 C.P.C. and Order 22 Rule 9

read with Rule 11 C.P.C. and Section 5 of the Limitation Act are allowed.

Let legal heirs be substituted.

The appeal is **allowed** in the said terms.

Record of the Tribunal be sent back.

(VIVEK AGARWAL)
JUDGE

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