

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 28th OF NOVEMBER, 2023

MISC. APPEAL No. 879 of 2015

BETWEEN:-

**1. RAJMANI SINGH S/O RAM PRATAP SINGH
(DIED) THROUGH L.R.s.**

**1(i) VANS GOPAL SINGH S/O LATE SHRI RAJMANI
SINGH, AGED ABOUT 75 YEARS, OCCUPATION
-AGRICULTURIST.**

**1(ii) MANMOHAN SINGH S/O LATE SHRI RAJMANI
SINGH, AGED ABOUT 72 YEARS, OCCUPATION
– AGRICULTURIST.**

**1(iii) SANTOSH KUMAR SINGH S/O LATE SHRI
RAJMANI SINGH, AGED ABOUT 65 YEARS,
OCCUPATION – AGRICULTURIST**

**1(iv) ASHOK BAHADUR SINGH S/O LATE SHRI
RAJMANI SINGH, AGED ABOUT 62 YEARS,
OCCUPATION – AGRICULTURIST**

**ALL ARE RESIDENTS OF VILLAGE – PANWAR
CHOUHNAN TOLA, TESHIL GOPAD BANAS,
DISTT. SIDHI (M.P.)**

**2. RAJBAHORAN SINGH S/O CHAKRAPATI
SINGH (DEAD) THROUGH HIS LR ,**

**2(i) VISHNU BAHADUR SINGH S/O RAJBAHORAN
SINGH, AGED ABOUT 63 YEARS,
OCCUPATION: ARGICULTURIST**

**2(ii) SANT BAHADUR SINGH S/O RAJBAHORAN
SINGH, AGED ABOUT 45 YEARS,
OCCUPATION: AGRICULTURIST**

2(iii). KRISHNDEO SINGH S/O RAJBAHORAN SINGH,
AGED ABOUT 60 YEARS, OCCUPATION:
AGRICULTURIST

2(iv). CHANDRAKANTA SINGH D/O RAJBAHORAN
SINGH, AGED ABOUT 42 YEARS,
OCCUPATION: HOUSE WIFE

2(v). VIDYAVATI SINGH D/O RAJBAHORAN SINGH,
AGED ABOUT 55 YEARS, OCCUPATION:
HOUSE WIFE

APPELLANTS NO.2(i) to 2(v) ARE RESIDENTS
OF VILLAGE PANWAR CHOUHANAN TOLA
TEHSIL GOPADBANAS DISTT. SIDHI (MADHYA
PRADESH)

....PETITIONER

(BY SHRI NEETESH KUMAR SINGH - ADVOCATE)

AND

1. DAYARAM S/O LATE DWARIKA PRASAD, AGED
ABOUT 40 YEARS

1A. DEENDAYAL S/O DWARIKA PRASAD, AGED
ABOUT 35 YEARS

1B. DAMODAR PRASAD S/O DWARIKA PRASAD,
AGED ABOUT 25 YEARS

1C. MST BADKIYA D/O DWARIKA PRASAD, AGED
ABOUT 46 YEARS

1D. MST. CHHOTKIYA D/O DWARIKA PRASAD,
AGED ABOUT 40 YEARS

1E. MST. GEDE D/O DWARIKA PRASAD, AGED
ABOUT 32 YEARS

1F. MST ROHINI D/O DWARIKA PRASAD, AGED
ABOUT 22 YEARS

ALL ABOVE ARE RESIDENTS OF VILLAGE
PANWAR P.S.SIDHI TEHSIL GOPADBANAS
DISTT. SIDHI (MADHYA PRADESH)

2. JAGDISH PRASAD S/O RUDRAMANI PRASAD,
AGED ABOUT 70 YEARS, R/O VILLAGE
BANJARI/ PANWAR, CHOUHANAN TOLA,
TEHSIL GOPADBANAS DISTRICT- SIDHI
(MADHYA PRADESH)

3. STATE OF MADHYA PRADESH THROUGH COLLECTOR SIDHI, DISTT.
SIDHI (MADHYA PRADESH)

(BY NONE)

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

ORDER

1. This appeal under Order 43 Rule 1(K) of the Civil Procedure Code, 1908 has been filed against the order dated 14.01.2015 passed in M.J.C.No.13/2014 by the Second Additional District Judge, Sidhi dismissing the Regular Civil Appeal No. 185A/2014 in the effect of abatement, arising out of the judgment and decree dated 28.10.2005 passed in C.S. No.242A/2003 by the Second Civil Judge, Class II, Sidhi.
2. The brief facts of the case are that plaintiff Ram Pratap Singh filed Civil Suit for declaration, possession and for the *mesne* profits in respect of land bearing old khasra Nos. 808,809,810,811,812,813,814,815,816 and 819 and new khasra Nos. 794,796,797, 798, 799,805,808,809,812,795 and 795/12 situated at village - Panwar Chouhanan Tola, 55/45 Tehsil – Gopadbanas, District Sidhi.
3. Vide judgment and decree dated 28.10.2005 the trial Court dismissed the suit. Being aggrieved by the judgment and decree passed by the Second Civil Judge, Class II, the plaintiffs / appellants filed miscellaneous appeal before the Second Additional District Judge, Sidhi. During the pendency of the appeal, defendant No.1 Dwarika Prasad died

and, therefore, legal representatives of respondent No.1 were brought on record as respondents No. 1 to 1(f).

4. Plaintiff No.2 Rajbahoran Singh also died during the pendency of the appeal before the first appellate Court on 27.03.2008 in his native place and on this account, on 28.11.2008 the respondent/ defendant submitted an application to the effect that appeal be abated against plaintiff No.2. The counsel for the plaintiffs informed about the same through one Vishwanath Dhobi. On coming to know about the same, the legal representatives of deceased plaintiff contacted the counsel and filed an application under Order 22, Rule 9 read with Section 151 of C.P.C. on 13.01.2009 along with an application under Section 5 of the Limitation Act for setting aside the effect of abatement in the appeal in which proceedings under Rule 372 of the Miscellaneous Civil Case were registered as MJC No. 13/2014 to initiate proceedings under Order 22 Rule 9(2) of C.P.C. A copy of the aforesaid applications are annexed herewith as Annexures A/1 and A/2.

5. The respondents/ defendants filed their reply disputing the case of the appellants/ plaintiffs and contended that application filed by the plaintiffs for condonation of delay is not supported by sufficient reason. Hence, the appeal be dismissed as abated.

6. The learned Court below vide impugned order dated 14.01.2015 rejected the application filed under Order 22, Rule 9 read with Section 151 of C.P.C. and also dismissed the application filed under Order 5 of the Limitation Act and dismissed the appeal as abated.

7. Being aggrieved by order dated 14.01.2015, the appellants/ plaintiffs filed this miscellaneous appeal on the ground that the Court below overlooked the provision of law in rejecting the application filed under Order 22, Rule 9 of C.P.C. along with application filed under Section 5 of the Limitation Act. It is well settled in law that that the Court should not have taken a technical view in rejecting the case in very ordinary manner. The object of law is to adjudicate the issues on merits and not in ordinary manner. Plaintiff No.2 Rajbahoran Singh died on 27.03.2008 and on coming to know through their neighbour about the application for abatement of appeal filed by the opposite party, the legal heirs of plaintiff No.2 filed application on 13.01.2009 for setting aside abatement of appeal. The Court below committed a substantial error in dismissing the entire appeal in the effect of abatement of appellant/ plaintiff No.2 Rajbahoran Singh. In view of the aforesaid grounds, plaintiffs pray for setting aside the impugned order dated 14.01.2015 in MJC No. 13/2014 and R.C.A. No. 185A/2014.

8. None present on behalf of respondents, even though served.

9. Heard the learned counsel for the appellant.

10. It is true that if legal representatives of deceased appellant are not brought on record within 90 days from the date of death of deceased, then suit would be abated. Thereafter, application for setting aside the abatement of appeal is to be filed within a period of 60 days and if the said

application is not filed then application under Order 22, Rule 9 of C.P.C. is to be supported by application under Section 5 of the Limitation Act.

11. Supreme Court in the case of **Mithailal Dalsangar Singh v. Annabai Devram Kini, (2003) 10 SCC 691** has held as under :-

“8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.”

12. Supreme Court in the case of **Banwari Lal v. Balbir Singh, (2016) 1 SCC 607** has held in paragraphs 9 and 10 as under :-

“9. Provisions of Order 22 CPC are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by

pedantic approach by observing strict adherence to the procedural aspects of law. In *Sardar Amarjit Singh Kalra v. Pramod Gupta* [(2003) 3 SCC 272] , a five-Judge Bench of this Court held as under: (SCC pp. 300-01, para 26)

“26. 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 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 in 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 intact 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 the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court [*Amarjit Singh v. Pramod Gupta*, 1991 SCC OnLine Del 131 : (1991) 20 DRJ 337] 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 in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. *Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled 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 bringing 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 the Court to do real, effective and substantial justice.”

(emphasis supplied)

10. In *Sital Prasad Saxena v. Union of India* [(1985) 1 SCC 163] , it was observed that the rules of procedure under Order 22 CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. On sufficient cause, delay in bringing the legal representatives of the deceased party on record should be condoned. Procedure is meant only to facilitate the administration of justice and not to defeat the same. The dismissal of the second appeal by the High Court does not constitute a sound and reasonable exercise of its powers and the impugned order [*Banwari Lal v. Balbir Singh*, 2013 SCC OnLine Del 6406] cannot be sustained.”

13. Hon’ble Apex Court in the case of **Ram Nath Sao alias Ram Nath Sahu and others Vs. Gobardhan Sao and others**, reported in **AIR 2002 SC 1201** has held that it becomes plain that the expression ‘sufficient cause’ within the meaning of Section 5 of the Limitation Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of *bona fide* is imputable to a party.

14. In view of the aforesaid law laid down by the Hon’ble Apex Court, in the considered opinion of this Court, the Court below has erred in dismissing the appeal filed by the appellants/ plaintiffs as the same is not sustained in the eyes of law. Consequently, the instant appeal filed by the appellants/ plaintiffs is allowed and the impugned order dated 14.01.2015 passed in M.J.C. No. 13/2014 and R.C.A No. 185A/2014 is set aside.

R.C.A No. 185A/2014 shall be restored to its original number and the appellants/ plaintiffs are directed to suitably amend the memo of appeal within four working weeks from the date of receipt of certified copy of this order and the Court below shall dispose of the First Appeal in accordance with law after affording sufficient opportunity of hearing to both the parties, as expeditiously as possible.

15. Accordingly, the instant appeal stands **allowed and disposed of**.
C.C. as per rules.

(HIRDESH)
JUDGE

Vikram