

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON 18th OF FEBRUARY, 2026

SECOND APPEAL No.2919 of 2025

RAMSWAROOP AND ANOTHER

Versus

CHURAMAN AND OTHERS

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Appearance:

Shri D.K. Dixit, Senior Advocate with Shri Abhishek Dubey for appellants.

Shri Shankar Prasad Singh, Advocate for respondents.

Shri Saurabh Singh Sengar, Panel Lawyer for respondent-State.

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JUDGMENT

This second appeal is preferred by the appellants/defendants challenging the judgment and decree dated 13.10.2025 passed by District Judge, Pawai, District Panna in RCA no. 10/2023 affirming the judgment and decree dtd.13.03.2023 passed by Civil Judge Senior Division, Pawai, District Panna in Civil Suit No.03-A/2018, whereby Trial Court decreed the plaintiffs' suit, which has been affirmed by the First Appellate Court, by dismissing the civil appeal as not maintainable for want of necessary parties.

2. Instant second appeal is listed for hearing on admission but since the contesting respondents/plaintiffs are duly represented by the counsel Shri Shankar Prasad Singh and Shri Saurabh Singh Sengar, therefore, with the consent of counsel for the parties, second appeal is heard finally on the following substantial question of law:-

“Whether in view of amendment made on 26.10.2023 in the impugned judgment and decree dtd.13.03.2023, consequent upon allowing the application under Section 151, 152 of CPC dtd. 26.09.2023, First Appellate Court has committed an illegality in dismissing the appellants/defendants’ application for substitution of legal representatives on the ground of delay, consequently civil appeal also as not maintainable for want of necessary parties?”

3. Facts in short, relevant for deciding this second appeal are that the respondents/plaintiffs namely, i). Churaman; ii). Pimmi Bai; and iii). Sita Bai; instituted a suit for declaration of title, for declaring the partition effected on 20.09.1985 as null and void, for declaring the sale deed dtd. 28.08.2020 (Ex.P/26) as null and void and for partition and separate possession of the suit property. During the pendency of the suit, the plaintiff 2-Pimmi Bai had died on 20.09.2020 and for substitution of her LR, an application under Order 22 Rule 3 of CPC was filed on 14.10.2020, which was allowed vide order dtd.07.07.2021, however for the reasons best known to the plaintiffs, LR of plaintiff 2-Pimmi Bai namely, Nindram was not substituted by incorporating his name in the plaint, however, later on the suit was decreed on 13.03.2023.

4. Against the judgment and decree dtd.13.03.2023, the appellants/defendants 1-2 preferred regular civil appeal on 06.04.2023, before First Appellate Court taking the aforesaid objection, as one of the grounds in the civil appeal, to the effect that since the decree has been passed against a dead person, therefore, the same is nullity.

5. Later on, the plaintiffs moved an application on 26.09.2023 for amendment of the judgment and decree (technically under Section 151, 152 of CPC) before Trial Court with the prayer for making necessary correction/amendment/substitution in the plaint as well as in the impugned judgment and decree dtd.13.03.2023 in the light of interim order already passed by Trial Court on 07.07.2021, which was allowed by Trial Court vide order dtd.26.10.2023 permitting the plaintiffs to amend the plaint as well as cause title of the judgment and decree and pursuant thereto, amendment was also incorporated timely.

6. In the light of aforesaid subsequent events/amendments made in the record of Trial Court, the defendants/appellants moved an application on 18.07.2025 under Order 41 Rule 20 CPC r/w Order 22 Rule 3 CPC before First Appellate Court for substitution of legal representative of deceased plaintiff 2-Pimmi Bai in the pending civil appeal, which was opposed by the respondents on the ground of delay etc.

7. After hearing the learned counsel for the parties, the First Appellate Court proceeded to decide the application but dismissed the same on the ground of delay and consequently dismissed the civil appeal also as not maintainable vide impugned judgment and decree dtd.13.10.2025 for want of impleadment of LR of deceased plaintiff 2-Pimmi Bai. Apparently, nothing has been considered on merits.

8. Learned counsel for the appellants/defendants submits that in the aforesaid circumstances and further in view of the fact that after filing of the civil appeal by the defendants on 06.04.2023, Trial Court had allowed the application under Section 151, 152 CPC on 26.10.2023, pursuant thereto, cause title of the judgment and decree passed by Trial Court was amended, First Appellate Court ought to have allowed the application filed by the defendants and instead of dismissing the civil appeal, as not maintainable, it ought to have proceeded to decide the same on merits. With these submissions he prays for allowing of the second appeal.

9. Learned counsel appearing for the respondents/plaintiffs supports the impugned judgment and decree passed by First Appellate Court and prays for dismissal of the second appeal, however, except the ground of delay, he could not support the judgment and decree on any other ground.

10. Heard learned counsel for the parties and perused the record.

11. Undisputedly, after passing of the judgment and decree by Trial Court on 13.03.2023, the appellants/defendants preferred civil appeal on 06.04.2023 and on the basis of ground of challenge, taken by the defendants in the memo of appeal, the plaintiffs moved an application before Trial Court on 26.09.2023 seeking amendment in the judgment and decree as well as in the plaint, which was allowed by Trial Court on 26.10.2023, however, on that basis the appellants/defendants also moved an application on 18.07.2025 in the pending civil appeal before the First Appellate Court for substitution of LR of plaintiff 2-Pimmi Bai, namely Nindram.

12. Although the application for substitution of LR was filed with delay on 18.07.2025, but in view of the fact that during pendency of civil appeal before First Appellate Court itself, the Trial Court amended the judgment and decree and the prayer for substitution/amendment in the memo of appeal was made, upon allowing the application filed by the plaintiffs, therefore, in my considered opinion the First Appellate Court ought to have permitted the defendants to implead the LR of plaintiff 2-Pimmi Bai and instead of dismissing the application/civil appeal, it ought to have decided the same on merits.

13. Further, in the case of MITHAILAL DALANGAR SINGH AND OTHERS v. ANNABAI DEVRAM KINI AND OTHERS, (2003) 10

SCC 691, Hon'ble Supreme Court has held that the LRs brought on record at any stage of the proceedings, enure for the benefit of the entire proceeding. Relevant paragraph reads as under :

“11. There is yet another aspect of the matter. As we have already noticed, the appeal against the order of ad interim injunction passed by the learned trial Judge was pending before the Division Bench. Therein the defendants had themselves moved an application for bringing on record the legal representatives of the deceased plaintiff, that is, the respondent in their appeal. The legal representatives being brought on record at any stage of the proceedings enures for the benefit of the entire proceedings. The prayer made by the defendants in their appeal for bringing on record the legal representatives of the deceased plaintiff-respondent in appeal was not opposed by the legal representatives or by any of the co-plaintiffs. Rather the prayer was virtually conceded to by the legal representatives themselves moving an application for being brought on record in the suit in place of the deceased plaintiff. In our opinion, the application made by the defendant-appellants in the appeal once allowed would have the effect of bringing the legal representatives on record, not only in the appeal but also in the suit. All that would remain to be done is the ministerial act of correcting the index of the parties by the applicants in appeal and then in the suit. In view of the defendants themselves having sought for impleadment of the legal representatives in the appeal the delay in moving the application in the suit by the legal representatives, being subsequent in point of time, became meaningless.”

14. In view of the aforesaid discussion and in presence of settled legal position, in my considered opinion, there was no question of delay in moving the application for substitution. Further, after allowing the substitution of LR of deceased plaintiff, the aforesaid being a mere ministerial work, even a duly constituted application was not required to be filed. In this regard, I find support from the decision given by a coordinate Bench of this Court in the case of *Amar Singh v. Pooran*, **2007 (2) MPLJ 215**.

15. Resultantly, the impugned judgment and decree passed by First Appellate Court deserve to be and are hereby set aside and the matter is remanded to First Appellate Court for deciding the civil appeal on merits

after permitting the defendants to substitute the LR of deceased Pimmi Bai.

16. Consequently, second appeal succeeds and is hereby **allowed**.
17. Pending application(s), if any, shall stand disposed of.
18. Parties are directed to remain present before the First Appellate Court on **16.03.2026**.

(DWARKA DHISH BANSAL)
JUDGE

KPS