

IN THE HIGH COURT OF JUDICATURE AT PATNA

Bhawar Prasad (since deceased) and others

vs.

Jangali Devi (since deceased) and others

First Appeal No. 408 of 1973

(with I.A. No. 4138 of 2018 and I.A. No. 24 of 2021)

18 January 2023

(Honourable Mr. Justice Ahsanuddin Amanullah)

Issue for Consideration

Whether the First Appeal arising from a partition suit had abated due to non-substitution of several deceased appellants and respondents within the prescribed limitation period, and whether such delay could be condoned in law?

Headnotes

There is an adjudication by the original Court and, thus, it cannot be said that the rights have not been adjudicated. Once a law is in place, which in the present case is the law of limitation, and the period prescribed for substituting a dead person/party, is within 90 days and multiple parties not being substituted for years together, the maximum being 20 years, the Court does not find it persuaded to interfere in the abatement. (Para 8)
Absence of so many persons whose share is in the corpus of the suit property, not being party in the appeal clearly has made the entire appeal incompetent to be proceeded with any further. (Para 9)
Interlocutory Applications No. 4138 of 2018 and 24 of 2021 stand allowed. As a consequence, the First Appeal itself stands dismissed as abated. (Para 10)

Case Law Cited

Majji Sannemma alias Sanyasirao v. Reddy Sirdevi and Others, 2021 SCC Online SC 1260; Budh Ram v. Bansi, (2010) 11 SCC 476.

List of Acts

Code of Civil Procedure, 1908 (Order XXII, Rule 9); Limitation Act, 1963 (Sections 5, 21)

List of Keywords

Abatement of appeal; Substitution of parties; Partition suit; Limitation; Condonation of delay; Indivisible decree; Interlocutory application

Case Arising From

Judgment and decree in a partition suit decided by the trial court in the District of Saran.

Appearances for Parties

For the Appellant(s): Mr. Prabhu Narayan Sharma, Advocate
For the Respondent(s): Mr. Ashok Kumar and Mr. Sushil Kumar Ojha, Advocates

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No. 408 of 1973

Along with
Interlocutory Application No. 4138 of 2018
and
Interlocutory Application No. 24 of 2021

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Bhawar Prasad (since deceased)

1 (i) is dead and her heirs are already on record as (R-II to 11)

(ii) Janki Devi, D/O Late Bhawar Prasad, W/O Satya Narain Prasad, vill-Karim Chak, P.O.+P.S. Danapur, Distt.Patna

(iii) Hapson Prasad, S/O Shri Deo Saran Prasad, S/o Predeceased, D/O (Lakhi Devi), resident of village-Fatanpur, P.O. and P.S. Garkha, District-Chapra

(iv) Kalika Devi, W/O Sri Ram Nath Prasad, D/O Predeceased, D/O Lakhie Devi, resident of village and P.O.Suberna, Harari, P.S. Awtar Nagar, District-Chapra

4 (i) Laljhari Devi, W/o deceased Narad Prasad.

4 (ii) Radhika Devi, D/o deceased Narad Prasad, W/O Ram Sanehi Prasad and one of his heirs are already on record as A-10, resident of vill. and P.O. Silhauri, P.S. Marhowrah, District -Saran

5 (i) Mostt. Ram Sakhi Kuer, W/O Rameshwar Prasad

5(ii) Bhushan Prasad, S/O Rameshwar Prasad, resident of vill. -Silhauri, P.S. Marhowra, Distt. Saran.

5. (iii)(a) Mostt. Munni Kumar, W/ deceased Mohan Prasad

5. (iii)(b) Amod Kumar, S/O deceased Mohan Prasad. Both are resident of Vill. and P.O. Silhauri, P.S. Marhowrah, District-Chhapra

5(iii)(c) Smt. Geeta Devi, D/O deceased Molu Prasad, W/o Shree Anuj Rai, resident of Village-Garhara, Sariya, P.O. Sonpur, P.S. Sonpur, District Chhapra

5(v) Manju Devi W/o Birendra Prasad, village- Bhahurahayia, P.O. Kaui, District-Chapra.

5(vi) Puspa Devi, W/O Manoj Prasad, village- Bhahurahayia, S.O. Sariya, P.S. Marhowrah, District-Chhptra.

5 (iv) Neena Devi, W/o Awadhesh Prasad, village- Bhahurahayia, P.S. Parsa, P.O. Pauruthi, District-Chapra.

6(i) Sushila Devi, Wife of Abhimanyu Prasad

6(ii) Abhishek Kumar, Son.

6(iii) Ashwani Kumar, Son

6(iv) Amit Kumar, Son.

6(v) Bina Rani, daughter, w/o Tarkeshwar Prasad

All are resident of village-Silhauri, P.S. Marhawa, District-Saran at Chhapra.

7. Surendra Prasad, S/o Asarfi Prasad, resident of village and Post Office-village-Silhauri, P.S. Marhawa, District-Saran.

8.Umesh Kunar, S/O Asarfi Prasad, resident of village and Post Office-village-Silhauri, P.S. Marhawa, District-Saran

9(i)Mostt. Kaushlya Devi, W/o Late Vijay Kumar

9(ii)Dhaneshwar Prasad, S/o deceased Vijay Kumar

9(iii) Poonam Kumari, D/o deceased Vijay Kumar.

9(iv) Pushpa Kumari, D/o deceased Vijay Kumar.

All are resident of village and Post Office- village-Silhauri, P.S. Marharwa, District-Saran

10. Prahlad Prasad, S/o Naresh Prasad, resident of village and P.S. Silhauri, P.S. Marhawa, District-Saran

... .. Appellant/s



Versus

Jangali Devi (since deceased)

1(a)(i) Raja Prasad, husband of Jangali Devi

1(a)(ii) Rajbanshi Rai, S/o Late Jangali Devi

1(a)(iii) Yadubanshi Rai, S./o Jangali Devi

1(a)(iv) Malhari Devi, W/O Jagat Prasad Rai

1(a)(v) Sarita Devi, W/o Ramesh Narain Singh

1(a)(vi) Kalika Devi, W/o Ashok Kumar

All daughter of Late Jangali Devi

1(a)(vii) Harendra Pd. Rai, S/o Late Rajendra Pd. Rai

1(a)(viii) Nagendra Kumar Rai, S/o Rajendra Pd. Rai

1(a)(ix) Dharmendra Rai, S/o Rajendra Pd. Rai. All are grandsons of Late Jangali Devi

1(a)(x) Usha Kumari, D./o Late Rajendra Pd. Rai

1(a)(xi) Asha Kumari, D/O Late Rajendra Pd. Rai. All are granddaughter of Late Jangali Devi. (Sl. No. 1(a)(i) to 1(a)(iii) & 1(a)(vii) to 1(a)(xi) resident of vill.-Dhup Nagar, P.S.& P.O. Jalalpur, Distt.Saran.

Sl. No. 1(a)(iv) resident of vill-Baluha P.S. & P.O. Chapra Sadar, Distt.-Saran.

Sl. No. 1(a)(v) resident of vill-Bhainsmara, P.S.& P.O. Garkha, Distt. -Saran

Sl. No. 1(a)(vi) resident of vill.-Dhonlahi, P.S. & P.O. Amaur, Distt.-Saran

2. (i) Mostt. Besari Devi, W/O Ramdeo Prasad, resident of vill.-P.O.-Silhaurhi, P.S. Marhwra, Distt.-Saran.

2(ii)(a) Mostt. Bedamia Kuer, W/o Late Shibpujan Prasad

2(ii)(b) Girja Pd. Yadav, S/o Late Shibpujan Prasad

2(ii)(c) Awadhesh Pd. Yadav, S/o Late Shibpujan Prasad

2(ii)(d) Sita Devi, W/o Jai Prakash Rai

2(ii)(e) Umrawali Devi, W/O Ajay Rai

2(ii)(f) Ranja Devi, W/o Ravindra Rai

All resident no. (d), (e) & (f) are daughter of deceased Shibpujan Prasad and all are resident of vill & P.O. Silhaurhi, P.S. Marharwa, Distt. Chapra.

2 (iii) Bikrama Prasad, S/o deceased Ramdava Prasad.

2(iv) Kedar Prasad, S/o deceased Ramdave Prasad

R. (v) Smt. Shanti Devi, W/o Mahanth Prasad, vill.-Chandchak, P.O. Aphar, P.S. Amnaur, Distt.-Saran

R(vi) Chinta Devi, W/o Radha Kishore Prasad, Vill.-Sardha, P.O. Dahiawah, P.S. Muffasil, Chapra, Distt.-Saran.

R(vii) Smt. Champa Devi, W/o Sri Jagdish Prasad, Vill. Chinar, P.O. Doriganj, Distt. Saran

Resp. No. 3(i) is dead and his heirs are already on record as Resp. no. 23, 24 and 25 as Respondent First Party.

4(a) Kailsiya Devi, W/o Brij Mohan Prasad Yadav, R/o village Prasadi, P.O. and P.S.-Parsa, District-Saran at Chhpura

R-9 to 12 already on record.

6-Ramcharitra Prasad.

7(a) Prahlad Prasa

(b) Mahesh Prasad

(c) Ramesh Prasad

All sons of Late Suchit Prasad

(d) Bidya Devi

(e) Deepak Devi

(f) Sangeeta Devi . All daughter of Late Suchit Prasad



(g) Mania Kuar, W/o Late Suchit Prasad Address not given in substitution petition.

8(i) Mostt. Ramdevi Devi, W/o Late Jaleshwar Prasad

(ii) Nand Kumar

(iii) Birendra Kumar

(iv) Jitendra Kumar

(v) Satendra Kumar. All sons of Late Jaleshwar Prasad, vill.+P.O.-Silhauri, P.S. Marhawa, District-Saran

10 Jaimangal Prasad

11. Kanhaiya Prasad

12. Uma Shankar Prasad

All sons of Hari Prasad

13. Paras Prasad

14. Lal Babu Prasad

All sons of Sheonandan Prasad

15. Ramji Prasad

16. Laxman Prasad

17. Lala Prasad.

All sons of Ramcharitra Prasad

18. Prahlad Prasad

19. Mahesh Prasad

20 Ramesh Prasad

All sons of Suchit Prasad

21. Nand Prasad, son of Jaleshwar Prasad

22. Sheopujan Prasad, son of Ram Dawan Prasad

23. Bikram Prasad

24. Kedar Prasad

son of Ram Dawan Prasad,

25. Girija Prasad, son of Sheopujan Prasad

Resident of Village and P.O.-Silhauri, P.S. Marhaura, District-Saran.

Respondent 1st Party

26. (a) M.P. Yadav, Resident of Bokaro Steel City, Sector-1218, Q. No. 3367, P.S. and District-Bokaro.

(b) Ram Lal Pd. Yadav-workshop B.C.C.L., Dhanbad

(c) S.P. Yadav-Sub Division Officer, P.H.E.D., near P.M.C.H., District-Patna

(d) Kameshwar Prasad-Silhauri, P.S. Marhaura, Distt.-Chapra

(e) Chiraiya Devi, W/o Sunar Roy, resident of vill. -Laganpura, P.S. Beldi, Distt. Chapra

(f) Lahi Devi, W/o Rameshwar Prasad Yadav, vill.-Madhurpur, P.S. Marhaura, Bihar

27(ka) (a) Dhananjay Prasad

(b) Jaimangal Prasad. Both are sons of deceased 27(ka)

(c) Smt. Sona Devi, W/o Laxman Prasad

Smt. Panna Devi W/o Sudama Prasad

(e) Ghular Devi, W/o Jamadar Pd.

27(kha)(i) Ratia Devi, W/o Jamuna Devi, vill-Gorkha, Distt.-Saran

(ii) Chinta Devi, W/o Sri Jawahir Rai, vill. Mohan P.O.+P.S. Marhaura, Distt.-Saran

(iii) Rajmatia Devi, W/o Sheodayal Rai, vill. Baldori, P.O.+P.S. Manjhi, Distt. Saran

(iv) Chintu Kumari



- (v) Manju Kumari, Boh are D/O Nawal Rai, vill. Khagari, P.S.-Jalalpur, Distt. Saran.
- 28(a) Shankar Rai, S/o Late Rampreet, Vill. Silhauri, P.S. Marhaura, Distt. Chapra
- 29(a) Tileshwari Devi, W/o Late Ramdeo Rai
- (b) Uma Rai
- (c) Radha Rai. Both son of Late Ramdeo Rai. All resident of Silhouri, P.O.& P.S.-Marhaura, Distt. Saran
- (d) Kalawati Devi, W/O Ambika Rai resident of vill. Pokhan, P.O. and P.S. Marhaura, Distt. Saran
- (e) Manju Devi, W/o Jitendra Rai, Resident of Gawra, P.O. and P.S. Marhaura Distt. Saran
- 30(a)(i)(ka) Sushila Devi, W/o Late Daroga Rai
- (a)(i)(kha) Sikandar Prasad, S/o Late Daroga Rai
- (Ga) Birju Kumar
- (Gha) Ravi Shankar
- (Cha) Munni Kumari
- (Chha)-Soni Kumari. All son and daughter of Late Daroga Rai, Resident of vill. Silhouri, P.S.-Marhaura, Distt. Chapra
- 30(a)(ii) Pulish Rai, son of Late Baijnath Prasad, Village-Silhauri, P.S. Marhaura, District-Chapra
- (a)(iii) Sita Devi, wife of Rameshwar Rai, Village Dayapur, P.S. Madhopur, P.S. Marhaura, District Chapra.
- (a)(iv) Gita Devi, wife of Pancham Rai, Village Channa, P.O. Mirjapur, P.S. Marhaura, District Chapra, Both daughter of late Baijnath Prasad.
- 30(b)(a) Prem Narayan Prasad, son of Tejbali Prasad
- (b) Anita Kumari
- (c) Lal Pari Devi
- (d) Babita Devi
- All daughter of late Tejbali Prasad, Resident of Silhauri, P.S. Marhaura, District Saran.
- 30(c) Sukhan Prasad
- (d) Jharokha Prasad
- (e) Lalak Prasad
- (f) Sanichri Devi
- (g) Phulmati Devi
- (h) Etwari Devi, daughter of late Kunj Bihari Lal.
- (i) Mostt. Sukwari Devi, wife of late Kunj Bihari Lal
- All are resident of Village-Silhauri, P.S. Mahauwara, District-Saran.
- 31(i) Babu Lal Rai
- (ii) Jaga Lal Rai. Both sons of Deceased.
- (iii) Ratni Devi, D/o Deceased W/O Huleshwar Rai, Vill.+P.O.+P.S.-Bheldi, Distt-Saran
- (iv) Butni Devi, D/o Deceased, W/o Kuldip Rai, Vill. Mobarkpur, P.S. Amour, Distt. Saran
- (v) Patania Devi, D/O Deceased
- W/o, Baldeo Rai, vill. Jagdishpur, P.S. Jalalpur, Distt.-Saran
- (vi) Deorania Devi, D/O Deceased, W/O Mahendra Rai Vill.-Asoiaan, P.O.-Mirjapur, P.S.-Marhaura, Distt. Saran
- 31 (vii)(a) Chandreshwar Rai, Vill. Tejpur, P.O.-Khodibag, P.S.-Jalalpur, Distt.-Saran
- 32(i) Mostt. Deopati Kuar, W/O Deceased.



(ii) Yogendra Rai
(iii) Sheo Kumar Rai
(iv) Dew Kumar Rai
(v) Om Prakash Rai
All sons of Late Deceased
All resident of village and P.O.-Silhauri, P.S.-Marhaura, Distt.-Saran
32(vi)Smt. Pandhari Devi, W/O Sri Shambha Rai, D/O Deceased, Vill. and
P.O. Manorpur, P.S. Amnour, Distt. Saran.
34. Budh Ram Rai
35. Raghunath Rai, S/o Lal Bihari Prasad, resident and P.O.-Silhaura, P.S.-
Marhaura, Distt.- Saran

2nd Party

36. State of Bihar through Collector of Saran, Chapra.
37. Sri Khedan Prasad, Uchcha Vidyalaya through Sri Hari Prasad (Defendant
No. 4), Secretary of Sri Khedan Prasad Uchcha Vidyalaya of Village-Silhauri,
P.S. Marhawra, District Saran.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Prabhu Narayan Sharma, Advocate
For the Respondents No. 9 and 19 : Mr. Ashok Kumar and
Mr. Sushil Kumar Ojha, Advocates

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 18-01-2023

Heard Mr. Prabhu Narayan Sharma, learned counsel for
the appellants and Mr. Ashok Kumar, learned counsel for the
respondents no. 9 and 19.

2. The matter has been coming up for passing orders on
various Interlocutory Applications filed either on behalf of the
appellants or the respondents.

3. At the outset, the Court would indicate that
Interlocutory Application No. 4138 of 2018 and Interlocutory
Application No. 24 of 2021 filed on behalf of respondent no. 9
have been taken up first for the reason that prayer has been made
in the said Interlocutory Applications for holding that the present



First Appeal has abated on account of death of respondents no. 8(i), 8(iii), 9, 23, 24, 29(c), 33 and 34 as per Interlocutory Application No. 4138 of 2018 and respondents no. 11, 26, 30(d), 32(ii) as also appellants no. 9 and 11 as per Interlocutory Application No. 24 of 2021.

4. Learned counsel for the respondents no. 9 and 19 pressing the aforesaid Interlocutory Applications submitted that the abovenamed respondents died in the year 1999, 2010, 2006, 2016, 2005, 2016, 2010, 2015, 2021, 2017, 2020 and 2020 respectively, whereas the appellants no. 9 and 11 have also died but the date is now known to him.

5. Learned counsel submitted that for substituting the respondents no. 8(i), 8(iii), 9, 23, 24, 29(c), 33 and 34, Interlocutory Application No. 16 of 2019 has been filed on 06.02.2019, whereas for substituting the respondents no. 11, 26 and 30(d), Interlocutory Application No. 22 of 2021 has been filed and with regard to respondents no. 30(d) and 32(ii) Interlocutory Application No. 20 of 2021 has been filed whereas no application has been filed with regard to respondent no. 26 and appellants no. 9 and 11.

6. Learned counsel submitted that the delay is ranging from a year to 20 years and, thus, it shows absolute casualness on



the part of the appellants in pursuing the appeal and the same suffers from willful delay and laches. It was submitted that even in the Interlocutory Applications filed seeking condonation of such delay no valid cause has been shown as the delay has also not been explained as is required for the entire period and only a vague statement has been made that such death was not in the knowledge of the appellants, which cannot be accepted since the appeal arises out of a partition suit and the parties being agnates, it cannot be believed that for such a long period of two decades, they would be unaware of the death having occurred of any of the parties, who are closely related to each other. Thus, learned counsel submitted that the law requiring such substitution to be made within 90 days of the death having occurred, the delay of so many years is not fit to be allowed. Further, it was submitted that as of now, the appeal itself has automatically stood abated and for setting aside the abatement even till date with regard to respondent no. 26 and appellants no. 9 and 11 there being no petition on record, on an overall view, the entire appeal should be held to have abated. In support of his contention, learned counsel relied upon a recent decision of the Hon'ble Supreme Court in **Majji Sannemma alias Sanyasirao vs. Reddy Sirdevi and others, 2021 SCC Online SC 1260**, for the proposition that the discretion to condone the delay



has to be exercised judicially based on facts and circumstances of each case and sufficient cause cannot be liberally interpreted if negligence, inaction or lack of *bona fide* is attributed to the party and further that even if it may harshly affect rights of a party it has to be applied with all its rigour when prescribed by the statute. Reliance was also placed on the decision of the Hon'ble Supreme Court in **Budh Ram v. Bansi, (2010) 11 Supreme Court Cases 476**, the relevant being at paragraphs no. 17 to 20, for the proposition that the abatement of appeal due to death of one respondent would lead to abatement against other respondents also, more so, in cases where there is joint and indivisible decree as in the present case, where in a partition suit till actually there is partition, there is a joint and indivisible right of all the co-sharers on the entire property and, thus, in the absence of so many parties, the appeal, but necessarily, has to abate. Moreover, learned counsel submitted that the Court has also held that abatement is automatic and there is no need for any declaration and the same has to be set aside by a formal order which till date has not been done. Learned counsel drew the attention of the Court to order dated 24.11.1994 which discloses that the appeal had already abated against the heirs of deceased respondent no. 3(i) and further that the order dated 12.02.2009 would indicate that two weeks time was granted to



serve copy of Interlocutory Application No. 193 of 2007 to the guardian advocate of minor respondents no. 11 to 21 and 23 to 25 which was peremptory and due to non-compliance the appeal stood rejected with regard to deceased appellant no. 2 and respondent no. 9.

7. Learned counsel for the appellants submitted that the Court may take a lenient view as it is a partition suit and the right of the parties exist which should be allowed to be adjudicated on merits. However, on a query of the Court with regard to there being no substantive explanation for the delay, learned counsel could not give any reply.

8. Having considered the matter, the Court finds that there is an adjudication by the original Court and, thus, it cannot be said that the rights have not been adjudicated. Once a law is in place, which in the present case is the law of limitation, and the period prescribed for substituting a dead person/party, is within 90 days and multiple parties not being substituted for years together, the maximum being 20 years, the Court does not find it persuaded to interfere in the abatement.

9. Coming to the question of whether the entire appeal would stand abated, it is obvious that in a partition suit, till the decree is passed, in the entire property, there is indivisible and



inseparable jointness. Thus, the absence of so many persons whose share is in the corpus of the suit property, not being party in the appeal clearly has made the entire appeal incompetent to be proceeded with any further. The Court also notes that the ratio of the decisions of the Hon’ble Supreme Court in **Majji Sannemma alias Sanyasirao** (*supra*) and **Budh Ram** (*supra*) apply in the facts and circumstances of the present case in favour of the contention of learned counsel for the respondents no. 9 and 19.

10. Accordingly, Interlocutory Applications No. 4138 of 2018 and 24 of 2021 stand allowed. As a consequence, the First Appeal itself stands dismissed as abated.

11. Having held that the First Appeal itself has abated, all pending Interlocutory Applications having become infructuous, stand disposed of.

(Ahsanuddin Amanullah, J)

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