

Shivratri Devi and ors. Vs. State of Jharkhand and ors.

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Court : Jharkhand

Decided On : Aug-13-2004

Reported in : [2005(1)JCR168(Jhr)]

Judge : N.N. Tiwari, J.

Acts : Jharkhand High Court Rules, 2001 - Rule 97

Appeal No. : S.A. No. 105 of 2003

Appellant : Shivratri Devi and ors.

Respondent : State of Jharkhand and ors.

Advocate for Def. : Anil Kumar Jha and; Shamim Akhtar, Adv.

Advocate for Pet/Ap. : C.S. Prasad, Adv.

Judgement :

ORDER

N.N. Tiwari, J.

1. The learned counsel for the appellants is permitted to make necessary correction in the cause title of the interlocutory application.
2. In the instant interlocutory application the appellants have prayed for leave to make themselves appellant and to allow them to proceed with this appeal as the

legal representative of deceased Jagdish Chowdhury who was the defendant-respondent before the lower appellate Court and died after conclusion of the hearing of the appeal and before passing the judgment and decree therein and as such the names of legal representatives could not be substituted in the lower appellate Court but have been entered as appellants in the memo of appeal. In support of same the appellants have sworn an affidavit. Defect has been pointed out by the stamp reporter regarding substitution of the names of the legal representative in place of Jagdish Chowdhury in the cause title of memo of appeal though their names do not appear in the decree of the lower appellate Court.

3. Mr. Anil Kumar Jha learned counsel appeared for the respondent No. 10 and Mr. Shamim Akhtar, learned counsel, for the State-respondent and opposed the prayer made in the application.

4. Mr. Jha objecting the prayer made in the interlocutory application has submitted that since the decree is in the name of a dead person the same is a nullity and the appeal preferred by the legal heirs representatives cannot be entertained. He further submitted that since the said Jagdish Chowdhury died before the decree was passed by the Courts below any order regarding substitution can only be passed by the lower appellate Court and this Court cannot pass an order allowing the legal representatives to proceed with this appeal unless they are so substituted by the lower appellate Court.

5. In my view. Rule 97 of High Court of Jharkhand Rules, 2001 is answer to such objection raised by the learned counsel. Rule 97 runs thus :-

'97(a) a beneficiary in property which at the date of such decree or order was vested in or was in the possession of a trustee, executor, administrator or a receiver or manager appointed by a Court, who as such was party to such a decree or order, or

(b) a legal representative as such of a deceased party to such decree or order, or

(c) an assignee of a party to such decree or order by assignment subsequently to the date thereof, or

(d) a person whose interest arose after the date of such decree or order by reason of any creation or devolution of interest by, through or from any party to such decree or order is affected and such beneficiary, legal representative, assignee or person was not or has not been made a party to such decree or order or to proceedings there under or thereon and desires to appeal there from, he may name himself in the memorandum of appeal as an appellant if along with such memorandum of appeal he presents an application for leave to make himself an appellant and an affidavit stating such facts as may be necessary in support of his applications.'

6. In the instant case, respondent died after conclusion of the hearing of the appeal and before the judgment and decree was passed. As stated by Mr. C.S. Prasad learned counsel for the appellants that same was informed by filing an application and thereupon the appellants before the lower appellate Court, who are the respondents in this appeal, had filed an application for substitution of legal heirs of the deceased Jagdish Chowdhury which is annexure-2 to this 1A. According to him, no order was passed on the said application on the ground of provision of Order XXII Rule 6 of the Code of Civil Procedure. According to the learned counsel, the said legal heirs and representatives were made party in the Execution Case No. 2 of 2003 levied by the respondents in the Court below a copy of which has been annexed as AnneXure-3 to this IA.

7. In his appeal some of the representatives of Jagdish Chowdhury are the appellants and as stated by the appellants some of the heirs who are not present at the time of filing of the appeal could not join as appellants and have been made proforma respondent. The said proforma respondents have no adverse interest to that of the appellants. According to the Mr. Prasad, they are the sons and daughter of late Jagdish Chowdhury and the said proforma respondents even may be transposed as appellants and as such there is no difficulty in making them as party invoking the provision of the Rule 97 of High Court of Jharkhand Rules 2001.

8. In my opinion there is much substance in the submission of Mr. Prasad. In the facts and circumstances of the case there is no impediment in granting leave to the appellants to file this appeal in their names in place of the deceased Jagdish

Chowdhury. The leave is thus granted. This IA No. 736 of 2003 is allowed. Consequently defect No. 1 as pointed out by the office will not be treated as defect.

The IA No. 736 of 2003 stands disposed of.

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