

IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No.07 of 2024

1. Mathura Prasad, aged about 63 years, Son of Late Dhaneshwar Mahto, resident of Village- Jabra, P.O.- Korrah, P.S. Muffasil, District- Hazaribagh

2. Rajesh Kumar, Aged about 46 years.

3. Pradeep kumar, aged about 43 years.

4. Om Prakash, aged about 40 years.

All Sons of Late Deoki Mahto, All Resident of Village-Jabra, P.O.-Korrah, PS-Muffasil, District Hazaribagh

5. Birendra Kumar, aged about 63 years, Son of Late Moula Mahto, resident of Village-Jabra, PO-Korrah, PS-Muffasil, District- Hazaribagh

6. Raju Sao, aged about 61 years, Son of Late Moula Mahto, resident of Village-Jabra, PO- Korrah, PS-Muffasil, District-Hazaribagh

7. Jitendra Sao, aged about 56 years Son of Late Moula Mahto, resident of Village-Jabra, PO-Korrah. PS-Muffasil, District- Hazaribagh

8. Anil Prasad, aged about 54 years, Son of Late Dhaneshwar Mahto, resident of Village Jabra PO Korrah PS Muffasil, District-Hazaribagh

9. Janki Mahto, aged about 85 years Son of Late Khedan Mahto, resident of Village- Jabra PO Korrah, PS Muffasil, District- Hazaribagh

10. Suresh Mahto, aged about 56 years, Son of Late Dhaneshwar Mahto, resident of Village-Jabra, PO-Korrah, PS-Muffasil, District- Hazaribagh

.... Appellants

Versus

1. Ram Das Ram, Son of Late Gajo Mahto, resident of Village-Jabra, Muffasil, PO- Korrah, PS- Muffasil, District-Hazaribagh

2. Deoki Mahto, Son of Late Gajo Mahto, resident Village-Jabra, PO- Korrah, PS- Muffasil, District-Hazaribagh

3. Gyan Prasad, Son of Late Deoki Mahto resident of Village-Jabra, PO- Korrah, PS- Muffasil, District-Hazaribagh

4. Kedar Prasad, Son of Late Deoki Mahto, resident of Village Jabra, PO- Korrah, PS- Muffasil, District-Hazaribagh

5. Nand Kishor Prasad @ Muneshwar Prasad, Son of Late Deoki Mahto, resident of Village Jabra, PO- Korrah, PS- Muffasil, District- Hazaribagh

6. Rajesh Kumar, Son of Late Deoki Mahto, resident of Village Jabra, PO- Korrah, PS- Muffasil, District-Hazaribagh

7. Kalawati Devi, Daughter of Late Deoki Mahto, W/o Deodhari Mahto, resident of Village- Chainpur, P.O. + P.S.- Mandu, District- Ramgarh

8. Lilawati Devi, Daughter of late Deoki Mahto, wife of Arjun Prasad, resident of Village Bargaon, P.O. + P.S.- Mandu, District-

Ramgarh

9. Sukhdeo Ram, Son of Late Ganjo Mahto, resident of Village- Jabra, PO- Korrah, PS- Muffasil, District-Hazaribagh

10. Kunj Nath Mahto.

11. Gopal Mahto.

Both are sons of Late Kali Mahto, resident of Village- Jabra, PO- Korrah, PS- Muffasil, District-Hazaribagh

12. Ganga Devi, Daughter of Late Kali Mahto, R/o village Munagaon, P.O. + P.S. Bishungarh, District- Hazaribagh.

13. Samri Devi, Daughter of Late Kali Mahto.

Both are resident of Village- Kolhu, P.O. + P.S.- Bishungarh, District- Hazaribagh

14. Meena Devi, Daughter of Late Kali Mahto, resident of Village- Atka, PO + PS-Bagodar District Giridih

15. Suman Devi, Daughter of Late Kali Mahto, resident of Village- Sariya, PO+ PS-Sariya District-Giridih

16. Ram Briksh Mahto

17. Basudeo Mahto @ Teka Mahto

Both are sons of Late Chintaman Mahto, resident of village- Jabra, PO-Korrah, PS Muffasil, District-Hazaribagh

18. Sudhir Mahto

19. Sanjay Mahto

20. Sadanand Mahto

All are sons of Late Chandrama Mahto, resident of Village Jabra PO Korrah PS Muffasil, District-Hazaribagh

21. Jyoti Kumari, Daughter of Late Chandrama Mahto, resident of Jabra, PO- Korrah, PS- Muffasil, District Hazaribagh

22. Rameshwar Mahto @Galua Mahto

23. Basant Prasad

Both are sons of Late Bishun Mahto, resident of Village-Jabra, PO-Korrah, PS- Muffasil, District-Hazaribagh

24. Sukar Mahto, Son of Late Jago Mahto

25. Baiju Mahto, Son of Late Ishwar Mahto

Both are resident of Village Jabra, PO-Korrah, PS-Muffasil, District- Hazaribagh

.... Respondents

CORAM : HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Appellants : Mr. Hemant Kr. Shikarwar, Advocate

For the Respondents : Mr. Kundan Kr. Ambastha, Advocate

Order No:-08 Dated:-24-09-2024

Heard the parties.

Perusal of the record reveals that the respondent No.2 namely Deoki Mahto died on 20.03.2013 and respondent No.25 namely Baiju Mahto died

on 24.04.2019 before passing of the impugned judgment and decree passed by the learned District Judge-VII, Hazaribagh in Civil Appeal No.69 of 2011.

It is a settled principle of law that a decree passed in favour of or against a dead person is a nullity, as has been held by the Hon'ble Supreme Court of India in the case of **Kishun alias Ram Kishun (Dead) Through LRS. Vs. Behari (Dead) By LRS.**, reported in (2005) 6 SCC 300, para-6 of which reads as under:-

"6. As rightly pointed out by learned counsel for the appellants and fairly agreed to by learned Senior Counsel for the respondent, the decree passed by the High Court in favour of a party who was dead and against a party who was dead, is obviously a nullity. It is conceded that the legal representatives of neither of the parties were brought on record in the second appeal and the second appeal stood abated. On this short ground this appeal is liable to be allowed and the decision of the High Court set aside. (Emphasis supplied)

Since the impugned judgment and decree itself is admittedly a nullity having been passed in respect of the dead persons being respondent Nos.2 and 25 of the instant appeal who were parties of Civil Appeal No.69 of 2011, hence, this Court is of the considered opinion that this Second Appeal is not maintainable having been preferred against the impugned judgment which is itself admittedly a nullity.

Learned counsel for the appellants submits that the appellants will approach the learned trial court for incorporating the legal representatives of the respondent Nos.2 and 25 of the instant appeal who were parties of Civil Appeal No.69 of 2011 and without intimating that death to the first appellate court, the impugned judgment and decree has been passed. Learned counsel for the appellants also places before this Court the order passed by a coordinate Bench of this Court in the case of Alimuddin Ansari Vs. Wasia Khatoon, reported in (2004) 4 JCR 700 (Jhr).

It is made clear that this order will not stand in the way of the appellants taking such steps as are permissible in law in the trial court to have the decree reopened and to have the legal representatives of the

respondent Nos.2 and 25 of the instant appeal who were parties of Civil Appeal No.69 of 2011 brought on record in that court.

Accordingly, this Second Appeal is dismissed, being not maintainable.

AFR-Animesh/

(Anil Kumar Choudhary, J.)