

IN THE HIGH COURT OF JHARKHAND, RANCHI

C.M.P. No. 85 of 2025

1. Bhudeo Choudhary aged about 72 years
2. Bhagwat Choudhary aged about 64 years
3. Wakil Kumar Choudhary aged about 56 years

All sons of late Girindra Choudhary resident of Village Tatijharia, PO and PS Tatijharia District HazaribaghDefendant No.2 to 2(b)/Petitioners

-- Versus --

1. MUKTA CHOUDHARY

Address - IMLI KOTHI, SHANKAR BHAWAN, NEAR LAMBODAR PATHAK CHOWK, P.O.- HAZARIBAG,

- 2) RAMANJ CHOUDHARY

IMLI KOTHI, SHANKAR BHAWAN, NEAR LAMBODAR PATHAK CHOWK, P.O. HAZARIBAG,

- 3) JASWA DEVI

VILLAGE MERKHTUI, P.O. KARIATPUR, P.S. DAROO, HAZARIBAGH

- 4) NUPUR DIXIT

VILLAGE TATIJHARIA, P.O.-TATIJHARIA,

- 5) ANJANA PATHAK

WIFE OF PRAMAINDER PATHAK VILLAGE TATIJHARIA, P.O.-TATIJHARIA,

- 6) KRISHNA UPADHYA

WIFE OF ASHISH MISHRA, VILLAGE TATIJHARIA, P.O.-TATIJHARIA,

- 7) PRAMILA CHOUDHARY

VILLAGE TATIJHARIA, P.O.-TATIJHARIA,

- 8) ANKIT BHARDWAJ

VILLAGE TATIJHARIA, P.O.-TATIJHARIA,

- 9) AKTA KUMARI

VILLAGE TATIJHARIA, P.O.-TATIJHARIA,

- 10) USHA CHOUDHARY

VILLAGE TATIJHARIA, P.O.-TATIJHARIA,

- 11) ANUBHAU CHODHARY

VILLAGE TATIJHARIA, P.O.-TATIJHARIA,

- 12) VIKKI CHOUDHARY

VILLAGE TATIJHARIA, P.O.-TATIJHARIA,

- 13) NARESH CHOUDHARY

VILLAGE TATIJHARIA, P.O.-TATIJHARIA,

- 14) PARUL PATHAK

WIFE OF JITESH PATHAK BEHIND PRAGATI NURSING HOME, PRAGATI APPARTMENT 2ND FLOOR, P.O. SARAIDHELA NEAR STEEL GATE, DHANBAD,

- 15) RANJEET CHOUDHARY

BHIM KANALI COLONY, NEAR KALI MANDIR, P.O.- BAGHMARA, DHANBAD

- 16) DHARMENDRA CHOUDHARY

BADWA BEDA, P.O. NAWAGARH (DUMRA), DHANBAD

- 17) SUSHIL KUMAR CHOUDHARY

VILLAGE TATIJHARIA P.O. TATIJHARIA,

- 18) REKHA TIWARI

VILLAGE DULIABAR, P.S. KASHIPUR, PURULIA

- 19) UMESH KUMAR CHOUDHARY

VILLAGE TATIJHARIA, P.O.-TATIJHARIA,
 20) NILIMA SUKLA
 WIFE OF ARUN SUKLA C/O S.L. DAS, DINKARNAGAR, OPPOSITE, FOREST
 COLONY, P.O. HAZARIBAG,
 21) KALPANA PATHAK
 MANGRODIH, P.O. DANDIDIH, GIRIDIH
 22) MINAKSHI PATHAK
 WIFE OF SUJEET PATHAK, MUNGRODIH COLONY, NEAR PANI, TANKI, P.O.-
 NAWADIH, DHANBAD
 23) AJEET PATHAK
 IMLI KOTHI, BARKAGAON ROAD, P.O.- HAZARIBAG.
 24) SUJEET PATHAK
 IMLI KOTHI, BARKAGAON ROAD, P.O. HAZARIBAG,
 25) DEBBRAT PATHAK
 IMLI KOTHI, BARKAGAON ROAD, P.O. HAZARIBAG,
 26) JAGESH PATHAK
 IMLI KOTHI, BARKAGAON ROAD, P.O. HAZARIBAG,
 27) NOMITA TIWARI
 Sl.23.residentof Imli Kothi, Barkagaon Road, PO and PS and District
 Hazaribagh Sl.No.4 to 13, 17 and 19 resident of Village Tatijharia, PO and PS
 Tatijharia, District HazaribaghOpposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

 For the Petitioner(s) :- Mr. Bhaiya V. Kumar, Advocate
 For the Opp.Parties :- -----

2/21.01.2025 Heard Mr. Bhaiya V. Kumar, the learned counsel for the petitioners.

2. This petition has been filed under Article 227 of the Constitution of India for quashing of the order dated 20.08.2024 passed by learned Additional Civil Judge, Jr. Division VII, Hazaribagh whereby the petition for substitution of Defendant nos.7 and 2(d) has been allowed.

3. Learned counsel for the petitioners submits that belatedly the said petition of substitution was filed and the same was also abated and in absence of any prayer of setting aside the abatement the learned court allowed the substitution which is illegal which may kindly be dismissed.

4. The Court has perused the impugned order. The learned counsel for the petitioners has annexed a petition filed for substitution along with the limitation petition as well as the rejoinder. Thus, it is admitted position that the petitions have been filed separately and learned court has considered that aspect of the

matter and condoned the delay and allowed the substitution petition.

5. It is well settled that mere title is not decisive for deciding the nature of this application. There appears to be no bar as such for filing consolidated application for the relief under Order 22 Rule 3 or 4 CPC and another under Order 22 Rule 9 CPC and for condonation of delay under section 5 of the Limitation Act. Even if Rules of procedure require for filing separate application for separate reliefs, even then, there can be no justification for filing three separate applications when the reliefs sought in the three applications are connected or when reliefs sought are dependent upon reliefs required to be obtained for getting complete relief.

6. In view of the above reasons the approach of the trial court was fully justified and the trial court rightly did not demand different application for the same relief. In a case where the relief of setting aside of abatement has not been specifically claimed, the court may consider the complete application to find out what is the prayer and if case is made out for condonation and for setting aside of abatement of proceedings, the Court may condone the delay, may set aside abatement of the suit even without specific prayer. Relief of impleading of legal representatives of one of the party may be if case is made out on the basis of the facts pleaded in the application, can be considered as an application for setting aside of abatement, which is a prayer inherently within the prayer for seeking relief of taking on record the legal representatives of the deceased in the suit.

7. Admittedly, defendant no.7 and 2(d) have left for their heavenly abode.

8. In view of the above facts and reasons the Court finds that there is no illegality in the impugned order.

9. C.M.P. No.85 of 2025 is accordingly dismissed.

(Sanjay Kumar Dwivedi, J.)

SI/ A.F.R