



HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 377 of 2012

Reserved on : 21.03.2022

Delivered on : 14.06.2022

1. Nankidai, Wd/o Late Hemraj, Aged About 72 Years, Caste- Teli, R/o Village- Kandola, Tehsil- Baramkela, Post- Bonda, P.S.- Sariya, District- Raigarh (C.G.) Pin- 496854
2. Sakravati, D/o Late Hemraj, Caste- Teli, Aged About 47 Years, W/o Bodhan Teli, R/o Chevaripali, Post- Barpali, P.S.- Sariya, Tehsil- Baramkela, District- Raigarh (C.G.) Pin- 496854
3. Bijali Bai, D/o Late Hemraj, Aged About 45 Years, W/o Devdhar, R/o Village- Kounva Tal, P.O., P.S. & Tehsil- Pusoure, District- Raigarh (C.G.) Pin- 496854
4. Sulochana Bai, D/o Late Hemraj, Aged About 35 Years, Caste- Teli, W/o Babu Lal, R/o Village- Domadih, Post- Malda, P.S. & Tehsil- Sarangarh, District- Raigarh (C.G.) Pin- 496445.
5. Rampyari, D/o Late Hemraj, Aged About 32 Years, Caste- Teli, W/o Amrit Lal, R/o Village- Bayang (Bhadrapali), Post- Kachar, P.S.- Kotra Road, Raigarh, Tehsil & District- Raigarh (C.G.) Pin- 496001.

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Versus

1. Vijay Lal, S/o Late Harihar, Aged About 48 Years.
2. Raj Kumar, S/o Late Hemraj, Aged About 42 Years.
3. Videshi Lal, S/o Late Harihar, Aged About 37 Years.
All by Caste- Teli, Respondents No. 1 to 3 are R/o Village- Kandola, Post- Bonda, P.S.- Sariya, Tehsil- Baramkela, District- Raigarh (C.G.) Pin- 496554.
4. Bali, D/o Late Harihar, Aged About 55 Years, W/o Lachhman, R/o Village & Post- Sankara, P.S.- Sariya, Tehsil- Baramkela, District- Raigarh (C.G.) Pin- 496854.
5. Indarmati, D/o Late Harihar, Aged About 44 Years, W/o Neelkantha, R/o Village- Baramkela, P.S., P.O. & Tehsil- Baramkela, District- Raigarh (C.G.) Pin 496854.
6. Vedmati, D/o Late Harihar, Aged About 35 Years, W/o Jadumani, Caste- Teli, R/o Village- Dongapali, Post, P.S. & Tehsil- Bathli, District- Bargarh (Orissa) Pin- 0768028.
7. Lachhmi Bai, D/o Late Hemraj, Aged About 53 Years, W/o Kartikeswar, R/o Village- Dongipali, Post, P.S. & Tehsil- Bhathli, District- Bargarh (Orissa) Pin- 0768028.
8. Kamla Bai, D/o Late Hemraj, Aged About 50 Years, Caste- Teli, W/o Hrishikesh, R/o Village & Post- Bhathli, P.S.- Sariya, Tehsil-





Baramkela, District- Raigarh (C.G.) Pin- 496854.

9. State of Chhattisgarh, Through: Collector Raigarh, P.S. & District- Raigarh (C.G.) Pin- 496001.

---- Respondents

For Appellants	:	Mr. S.N. Nande, Advocate.
For Respondents No. 1 to 8	:	Mr. H.S. Patel, Advocate.
For State/Respondent No. 9	:	Mr. Ravi Pal Maheshwari, P.L.

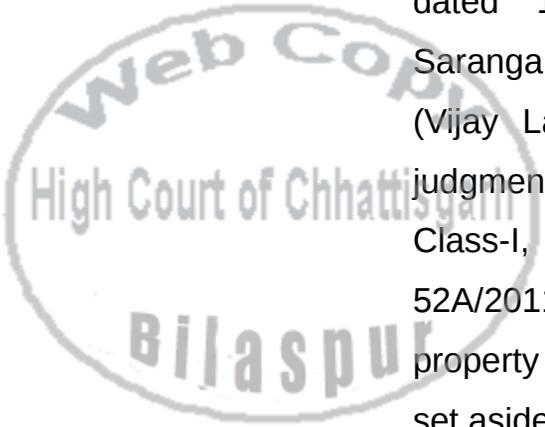
Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. JUDGMENT

1. This second appeal has been filed by the appellants/plaintiffs under Section 100 of the C.P.C. against judgment and decree dated 14.08.2012 passed by Additional District Judge, Sarangarh, District- Raigarh (C.G.) in Civil Appeal No. 04A/2011 (Vijay Lal & others Vs. Nanki Dai & others) whereby the judgment and decree dated 30.03.2011 passed by Civil Judge Class-I, Sarangarh, District- Raigarh (C.G.) in Civil Suit No. 52A/2011 for declaration of title and possession of the suit property mentioned in Schedule- C & D of the plaint, has been set aside.
2. For the sake of convenience, the parties shall be referred to in terms of their status in Civil Suit No. 52A/2011 which was filed for declaration of title and possession of the suit property.
3. The instant Second Appeal is admitted for hearing by this Court vide its order dated 08.11.2012 on the following substantial question of law:-

“Whether the lower appellate Court was justified in allowing the appeal and dismissing the suit filed by the appellant instead of remanding the same in absence of any valid written statement/ pleadings on behalf of the then defendant Harihar ?”

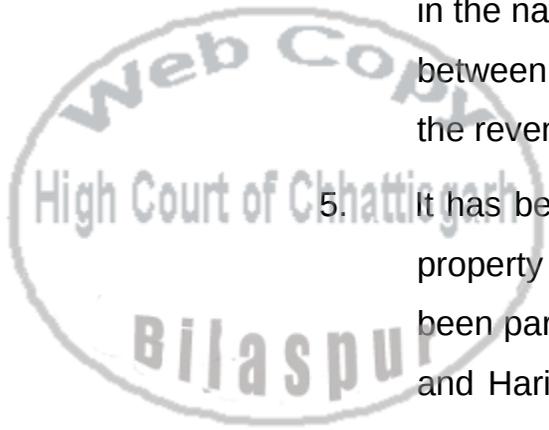
4. The brief facts, as reflected from the plaint averment, are that the plaintiff has filed Civil Suit No. 16A/2007 before Civil Judge Class-II, Sarangarh, District- Raigarh (C.G.) for declaration of





title and possession mainly contending that the property mentioned in Schedule-A of the plaint situated at Village-Kandola, Patwari Halka No. 35, Revenue Circle- Sariya, Tahsil-Sarangarh, District- Raigarh (C.G.) is recorded in the name of ancestor of plaintiffs and defendants namely Anandram. The property mentioned in Schedule-B of the plaint situated at Village- Sukhapali, Patwari Halka No. 30, Revenue Circle-Sariya, Tahsil- Sarangarh, District- Raigarh (C.G.) is agricultural land, which is also recorded in the name of ancestor of the plaintiffs and defendants. The property situated at Village-Bhikhampura, Patwari Halka No. 39, Revenue Circle- Sariya, Tahsil- Sarangarh, District- Raigarh (C.G.) total 14 plots, area admeasuring 4.634 Hectares is also ancestral property recorded in the name of their ancestor, which has already been partitioned between the parties on the basis of oral partition and recorded in the revenue record.

5. It has been further contended that after death of Anandram, the property mentioned in Schedule-A & B of the plaint has already been partitioned between husband of plaintiff No. 1- Late Hemraj and Harihar prior to 35-40 years in the year 1970. Accordingly, the property mentioned in Schedule- C & D of the plaint are separate share of Late Harihar and he was in possession of that property and doing agricultural work. Plaintiff No. 1- Nanki Dai's husband-Late Hemraj and Harihar have already orally partitioned the house and movable property situated at Village-Kandola and they are in possession of their separate share of property, as such, there is no dispute with regard to this property. It has been further contended that plaintiff No. 1- Nanki Dai is second wife of Hemraj. His first wife-Sukhelibai expired prior to 50-52 years having two daughters, thereafter, plaintiff No. 1 got marriage as per family customs and from their wedlock, four daughters were born. It has been further contended that on 27.11.2002, since the plaintiffs have no male child, defendant No. 1 with intent to take possession of the agricultural land, has

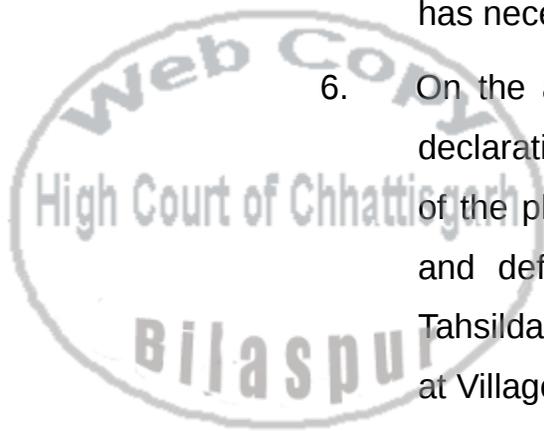




removed crop stand in the land allotted to plaintiff No. 1 through oral partition. Against that, the plaintiff has lodged FIR at Police Station- Sariya and also filed an application before the Sub Divisional Officer, Sarangarh for seizing the crop, in which, possession has been directed in favour of plaintiff No. 1 whereas defendant No. 1 is still continuing the dispute. Considering this aspect of the dispute created by defendant No. 1, plaintiff has filed an application before Naib Tahsildar, Sariya for recording their names in the property situated at Village- Kandola and Sukhpali. Accordingly, vide order dated 30.08.2005, the property of husband of plaintiff No. 1 Hemraj was directed to be partitioned. The plaintiff has filed revision against the order passed by the Naib Tahsildar which was also dismissed, which has necessitated the plaintiff to file the civil suit.

6. On the above factual matrix, the plaintiffs have prayed for (1) declaration of title for the property mentioned in Schedule- C & D of the plaint on the basis of oral partition between the plaintiffs and defendants No. 2 & 3, (2) order passed by the Naib Tahsildar with regard to the possession of the properties situated at Village- Kandola & Sukhpali be declared as null and void & (3) possession of the suit property may kindly be restored in favour of the plaintiffs.

7. The trial Court issued notice to the defendants. Defendant No. 1 has filed his written statement denying the allegations made in the plaint contending that his elder brother Late Hemraj has taken Rs. 50,000/- and other movable property at the time of oral partition, which was in addition to the partition and he has also stated that the order passed by the Naib Tahsildar dated 03.05.2007 is also illegal as it has been passed without giving any opportunity to defendant No. 1. It has also been contended that defendant No. 1 has also preferred an appeal before Sub Divisional Officer, Sarangarh against the order passed by Naib Tahsildar with regard to land situated at Village- Kandola and Sukhapali on 03.05.2007 and would pray for dismissal of the



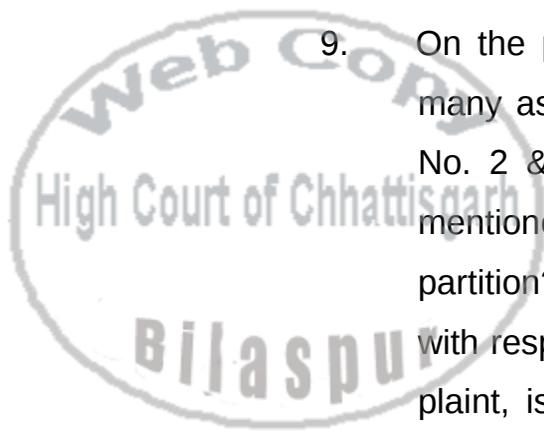


suit.

8. Defendants No. 2 & 3 have also filed their written statements denying the allegations made in the plaint mainly contending that the parties are in possession of their property as per oral partition, accordingly, Naib Tahsildar, Saragarh has directed for partition. The said order has been approved by the Additional Collector, accordingly, the records have been corrected, as such, it is binding upon the parties. It has also been further contended that Surbeli is the first legally wedded wife of Hemraj, as such, defendants No. 2 & 3 be given $\frac{1}{2}$ share of all the properties of Hemraj, therefore, the plaintiffs are not entitled to get any relief against the defendants No. 2 & 3 and would pray for dismissal of the suit against defendants No. 2 & 3.

9. On the pleadings of the parties, learned trial Court framed as many as four issues- (1) Whether the plaintiffs and defendants No. 2 & 3 are title holder and in possession of the property mentioned in Schedule- C & D of the plaint as per earlier oral partition? (2) Whether the order passed by the Naib Tahsildar with respect to the property mentioned in Schedule-A & B of the plaint, is liable to be declared null and void? (3) Whether the plaintiffs are entitled to get possession from defendants No. 1 & 3? & (4) Relief and cost.

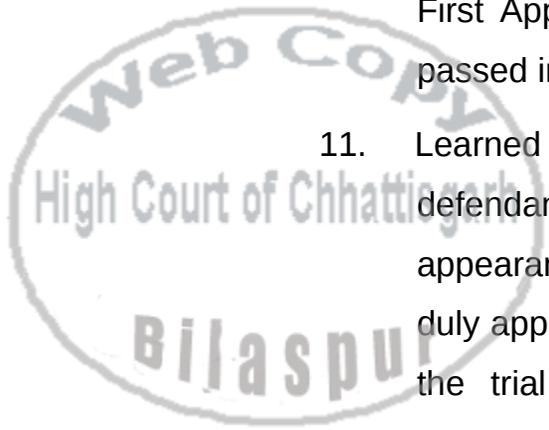
10. Learned trial Court vide its judgment and decree dated 30.03.2011 has decreed the suit in favour of the plaintiffs and directed that the plaintiffs and defendants No. 2 & 3 are entitled to get title over the property mentioned in Schedule C & D of the plaint as per oral partition taken place between them. It has also been directed that if the plaintiffs have dispossessed from their share of the suit property mentioned in Schedule- C & D of the plaint, they will be restored back and are entitled to get possession. Against that, defendants No. 1 to 3 have preferred first appeal under Section 96 of the C.P.C. before the learned Additional District Judge, Sarangarh, which has been allowed vide judgment and decree dated 14.08.2012 dismissing the suit





filed by the plaintiffs on the count that Harihar has not filed any written statement nor written statement filed by Vijay Lal can be treated as written statement filed by Harihar. Learned First Appellate Court has also recorded that Harihar expired and Vijay Lal became party on 23.04.2009 being legal representative of deceased Harihar whereas the defendant No. 1 who was already appearing as defendant No. 1, has signed the Vakalatnama on 24.01.2008 at that time, he was not made party to the suit, as such, the written statement filed by him, cannot be said to be legally filed written statement, as such, the objection raised in the written statement is not acceptable, therefore, issue raised by the trial Court is also not correct. Accordingly, the decision taken by the trial Court is also not correct. Thus, the First Appellate Court has set aside the judgment and decree passed in favour of the plaintiffs.

11. Learned counsel for the appellants/plaintiffs would submit that defendant No. 1 namely Harihar having been summoned for appearance before the learned trial Court on 27.10.2007 through duly appointed counsel and in pursuance of the notice issued by the trial Court, defendants No. 1 & 3 have entered into appearance on 30.11.2007 and on 24.01.2008, defendant No. 2 has entered appearance. The order-sheet of the trial Court would reflect that power of attorney dated 15.01.2008 executed by defendant No. 1-Harihar in favour of Vijay Lal was filed on 24.01.2008 along with written statement of defendants No. 1 & 3. No one on behalf of defendant No. 4 has appeared, therefore, exparte proceedings were done. The power of attorney provides that Harihar being suffering from paralysis was unable to move from his house and has appointed his son Vijay Lal as power of attorney holder, who was authorized to file written statement and also authorized to execute the compromise in the case. The power of attorney further provides that all the proceedings taken by the power of attorney holder will be deemed to be action taken by him and it will be binding upon him without any

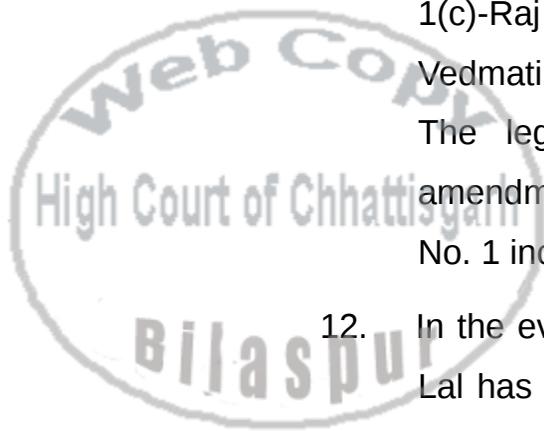




reservation. It is also reflected that written statement signed and verified by Vijay Lal has filed written statement on behalf of defendant No. 1 on 24.01.2008 denying the allegations made in the plaint and prayed for dismissal of the suit. The records of the trial Court would further show that on the basis of power of attorney, Vijay Lal has also filed Vakalatnama on 26.03.2008. Defendant No.2-Laxmibai & defendant No. 3-Kamla Bai have filed their written statements separately, which was taken on record. Issues have been framed on 12.02.2008 & 30.03.2011. On 02.03.2009, the plaintiff moved an application under Order 22 Rule 4 of C.P.C. on the count that defendant No. 1 expired and the learned trial Court issued notice to the proposed legal representatives of defendant No. 1. Defendant No. 1b-Vijay Lal, 1(c)-Raj Kumar, 1(d)-Videsh Lal, 1(e)-Vati, 1(f)-Indermati & 1(g)-Vedmati, were brought on record vide order dated 22.04.2009. The legal representatives have moved an application for amendment in the written statement filed on behalf of defendant No. 1 incorporating certain new facts, which was also allowed.

12. In the evidence, the witness examined by the defendant Videsh Lal has stated that when the written statement was filed at that time, his father Harihar was alive, but his father Harihar has not signed the written statement as he was suffering from paralysis and elder brother Vijay Lal has signed the written statement. Learned trial Court after appreciating the evidence has decreed the suit in favour of the plaintiffs. Against that, first appeal was filed, wherein one of the grounds has been taken that the written statement was not signed by Harihar, but some other person has signed the written statement and the learned trial Court has taken into consideration the defence taken by the person who was not party to the case. As such, prayed for setting aside the judgment and decree. Learned First Appellate Court has allowed the appeal for the reasons mentioned in previous paragraph of this judgment.

13. I have heard learned counsel for the parties and perused the





entire record of the trial Court with utmost satisfaction.

14. From the records, it is quite clear that defendant No. 1 has filed written statement signed by Vijay Lal who was power of attorney holder of Harihar. The execution of power of attorney is governed by Section 2 of the Powers of Attorney Act, 1882 (for short "the Act, 1882) as well as Sections 188 & 226 of the Indian Contract Act, 1872 (for short "the Act, 1872). Section 2 of the Act, 1882, Sections 188 & 226 of the Act, 1872 are necessary for deciding the present appeal, which are extracted below:-

"Section 2-Execution under power-of-attorney-

The donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

Section 188- Extent of agent's authority- An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business

Section 226. Enforcement and consequences of agent's contracts.- Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into the acts done by the principal in person."

15. The provisions of Section 2 of the Act, 1882, has come up for consideration before Hon'ble Division Bench of High Court of Karnataka in **Syndicate Bank Vs. Amitha & other**¹, wherein it has been held at paragraph 20 as under:-

¹ AIR 1985 Kar 213 : 1985 ILR Kar 1900





“20. We must not fail to notice that a power of attorney is a document of convenience. It is a document which aids all kinds of transactions to be carried out by the agent in the absence of the principal. S. 226 of the Contract Act and Section 2 of the Powers of Attorney Act make it abundantly clear that the principal is liable for all the actions of his agent. Most people respect the power of attorney acting in good faith and on the plain language of the power conferred. If the construction suggested by the learned counsel for defendants 3 to 9 is accepted, then more often than not it would enable the principal to escape his liabilities and obligations for the acts of his agent.”

16. Hon'ble High Court of Karnataka in subsequent judgment in **S.V. Revanaradhya Vs. Sri. Jagadish Mallikarjunaiah Chakrabhavi**², has held at paragraph 12 & 16 as under:-

“12. Thus, a power of attorney is an authority given by a formal instrument whereby one person, who is called the donor or principal, authorises another person, who is called the donee, attorney, or agent, to act on his behalf. A general power of attorney is one by which authority is given to act for the principal in all matters, or in all matters of a particular nature, or concerning a particular business. A special power of attorney is one by which authority is given to do some particular specified act. The law relating to powers of attorney is a branch of the law of agency. Where the authority of the agent is required to be conferred by a deed, or the circumstances require to appoint an agent formally to act for the principal in one transaction, or a series of transactions, or to manage the affairs of the principal generally, the necessary authority is conferred by an instrument known as power of attorney. It is a document of convenience, which gives a right to the donee to use the name of the principal.

16. Section 188 of the Indian Contract Act provides for the extent of agent's authority. It states that an agent having an authority to do an act, has authority to do every lawful thing, which is necessary in order to do such act. An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.”

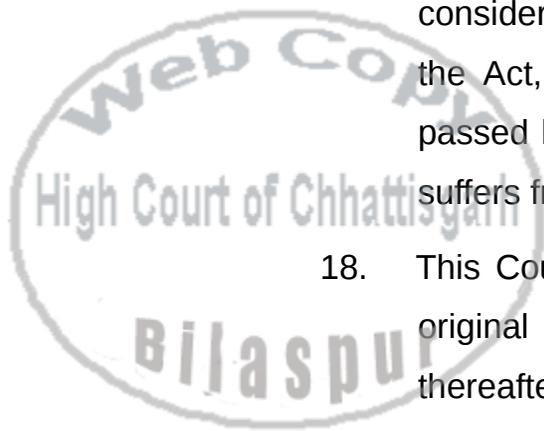
2 ILR 2010 Kar 3774





17. From the above stated factual position and considering the law on the subject, it is quite vivid that Vijay Lal has filed written statement being power of attorney holder though not mentioned in the written statement and no one has raised objection about the execution of power of attorney in his favour. Defendant No. 1- Vijay Lal has filed appeal contending that the learned trial Court has taken into consideration the written statement which was not signed by the competent person whereas he himself being the power of attorney holder has not raised any question over the power of attorney executed in favour of defendant No. 1, as such, he is estopped from turning around and saying that written statement has been filed by unauthorized person. The learned First Appellate Court has committed gross illegality in considering the submission without considering the provisions of the Act, 1882. As such, the impugned judgment and decree passed by the learned First Appellate Court allowing the appeal suffers from patent illegality.

18. This Court cannot lose sight of the fact available on record as original defendant No. 1- Harihar expired on 22.12.2008 and thereafter, Vijay Lal and other persons namely Raj Kumar, Videsh Lal, Vati, Indermati & Vedmati were arrayed as party to the case. Vijay Lal who has signed the written statement and also filed Vakalatnama being a power of attorney holder after death of Harihar became legal representative of deceased Harihar and he along with other legal representatives were arrayed as party to the case and Vakalatnama was also filed on behalf of all the legal representatives on 08.04.2008. The learned First Appellate Court without examining the provisions of Legal Representatives as defined in Section 2(11) of the C.P.C. and without considering that the legal representative steps into the shoes of deceased, it means they are bound by the acts of the persons in whose shoes they have stepped into and they did not have any right to setup any individual case or they can be allowed to file a fresh written statement and has allowed the





appeal on the count that the learned trial Court has considered the written statement filed by unauthorized person.

19. It has been well settled by the various High Courts that the legal representatives of a deceased defendant can only step into the shoes of the deceased defendant and did not have any right to set up any individual case or to be allowed to file fresh written statement which has already been filed by the defendant. Hon'ble Delhi High Court in **Vigro Frozen Foods P. Ltd. Vs. S.K. Gandhi & another**³ has held at paragraph 5 as under:-

“5. I agree with the submission of the learned counsel for the plaintiff, as far as the merit of the present application is concerned. It is an undisputed fact that defendants No.1 & 2 had filed the written statement to the suit. The replication was also filed by the plaintiff and subsequently, the issues were framed. The evidence of the plaintiff is also on record. The defendants have filed their evidence by way of affidavit and cross-examination of DW-1 was also partly recorded. There is no dispute that the applicants are the legal heirs of the deceased defendants. They have no independent right, title or interest dehors the claim of the defendants No.1 & 2. Actually, they have come on record at a later I.A. No.4139/2010 in CS(OS) No.1239/2002 Page No.2 of 3 proceeding and have been impleaded by the plaintiff on the death of defendants No.1 & 2. They have simply stepped into the shoes of the deceased defendants. Hence, they cannot be permitted to set up a new case or to be allowed to file the fresh written statement which has already been filed by defendants No.1 & 2. The application filed by the applicants is highly misconceived and the same is accordingly dismissed.”

20. Hon'ble Allahabad High Court in **New Okhla Industrial Development Authority Vs. Pooran Singh & others**⁴, has held at paragraph 12 to 15 as under:-

“12. Definition of the term "Legal Representative" contained in Section 2(11) of Code of Civil Procedure is very wide [See AIR 1949 All 604 (DB)].

13. According to the definition, it includes a

³ (2012) 127 DRJ 339

⁴ (2004) AIR (Allahabad) 218





person, who in law represents estate of deceased person. Definition in this Court denotes that those class of persons on whom the status of a representative is fastened by reason of death, whose estate they are held to represent. [See AIR 1929 Oudh 353 (DB)].

14. It is rights and liabilities of the original party that have to be considered and not those of legal representative. All that legal representatives can take up suit at the stage it was left, when original party (so represented by him) died and to continue it likewise that defendant is entitled to raise against a legal representative, any defence other than those, which he could raise against deceased plaintiff.

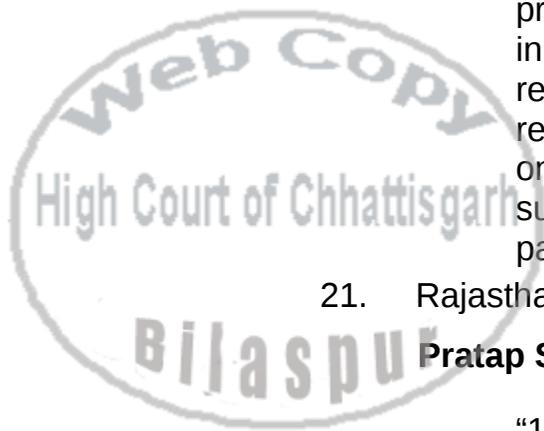
15. A 'legal representative' steps into the shoes of an original deceased party, who died during pendency of a proceeding and only represents the estate of the deceased. He is to continue the proceedings as could have done by the deceased, in whose place he is substituted as his 'legal representative'. It is also well settled that legal representative can contest a suit/proceeding only on the basis of 'cause of action', on which suit/proceeding was contested by the deceased party and not beyond it."

21. Rajasthan High Court (Jaipur Bench) in **Rameshwar Prasad Vs. Pratap Singh**⁵, has held at paragraph 11 to 14 as under:-

"11. A legal representative must proceed with the litigation from the stage where the death of the plaintiff or defendant had taken place. He is bound by the pleadings of his predecessor in whose place he has been substituted. A legal representative substituted under order 22 Rule 4 C.P.C. cannot set up a new or individual right. He cannot take up a new and inconsistent plea or a plea contrary to the one taken up by the contrary to the one taken up by deceased. He thus stands in the shoes of the deceased plaintiff or defendant as the case may be and must accept the position adopted by his predecessor that is the deceased plaintiff or the deceased defendant.

12. Bhawani Singh is, therefore, bound by the written statement filed by the deceased Takhat Singh. He cannot be allowed to repudiate the written statement filed by Takhat Singh. In *Thavazhi Karnavan v. Sankunni* A.I.R 1935 Madras 52, the learned Singh Judge has observed :

5 (1990) RRD 257





“A party who comes into the suit as the legal representative of another party cannot be allowed to depart from or vary or contradict the attitude taken up by the party whose legal representative he is, it is obvious that if he were permitted to do so, it would be impossible to conduct any litigation where legal representatives come in.”

13. In *Babulal v. Jeshankar* A.I.R. 1972 Calcutta 494 the following view has been expressed :

“A legal representative substituted in place of a deceased defendant cannot be permitted to make out a new case afresh in another written statement at this stage. He has to take up the suit at the stage at which it was left when the original party died and to continue it. The only right he has is to make a defence appropriate to his character as a legal representative of the deceased defendant. His case is on a different footing than the addition of a new defendant which is governed by O.1 R.10 (iv). Therefore, only the order for substitution would be served on the substituted defendant and no fresh writ of summons could be issued for service on the substituted defendant.”

14. The substituted defendant Bhawani Singh is, therefore, bound by the written statement filed by Takhat Singh. ”

22. Now coming to the facts of the case, it is quite vivid that Vijay Lal was earlier power of attorney holder which was never disputed by the plaintiff also and thereafter, he became legal representative, as such, he stepped into shoes of deceased Harihar, therefore, he cannot turn around and could not take a ground that the learned trial Court has committed illegality in relying upon the written statement by incompetent person. The learned First Appellate Court has not examined the case in light of the facts already brought on record as well as considering the provisions of Section 2(11) of the C.P.C. with regard to the legal representative, thus, committed illegality in setting aside the judgment and decree passed by learned trial Court without examining the evidence, material on record, but on the ground which is not permissible under the law and thus, the judgment and decree passed by the learned First Appellate Court

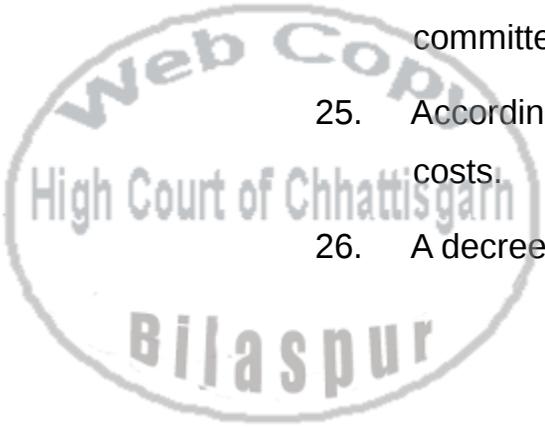




deserves to be set aside and accordingly, it is set aside. Consequently, the matter is remitted back to the First Appellate Court to decide the appeal filed by Vijay Lal and other defendants on merit taking into consideration the defence taken by them in the written statement filed before the trial Court within an outer limit of six months from the date of receipt of copy of the judgment and decree passed by this Court.

23. The parties are directed to appear before the learned First Appellate Court i.e. Additional District Judge, Sarangarh, District-Raigarh (C.G.) on **13th July, 2022**.
24. It is made clear that this Court has not commented anything on merits of the case and only examined the substantial question of law framed by this Court with reference to the illegality committed by the learned First Appellate Court.
25. Accordingly, the instant second appeal is allowed. No order as to costs.
26. A decree be drawn up accordingly.

**Sd/-
(Narendra Kumar Vyas)
Judge**





HEAD-NOTE

Every action done by the power of attorney holder, will deem to be done by the executant of the power of attorney holder unless restriction is imposed.

पावर ऑफ अटॉर्नी धारक द्वारा की गई समस्त कार्यवाही पावर ऑफ अटॉर्नी निष्पादक के द्वारा की गई मानी जाएगी जब तक कि उसमें विशेष रूप से प्रतिबंध नहीं लगाया गया हो।

