

**SUPREME COURT OF INDIA**

Budhar Ram

Vs.

Deva Ram

C.A.No.6688 of 2004

(Y. K. Sabharwal and D. M. Dharmadhikari JJ.)

11.10.2004

**ORDER**

1. Interlocutory application for exemption from filing official translation is allowed.
2. Leave granted.

3. The challenge in this appeal is to the impugned order dated 6.8.2003 passed by the High Court rejecting the application of the appellant dated 23.4.2003 for bringing on record the legal representatives of deceased respondent no. 2 Shri Kharta Ram. It appears that Shri Kharta Ram died during the pendency of the Suit. It is also not in question that in the first appeal (Civil First Appeal No. 303/2001) filed against the judgment and decree of the trial court, instead of making legal representatives of Shri Kharta Ram as respondents, Shri Kharta Ram was impleaded as respondent no.2. To correct that mistake of filing the appeal against respondents out, of which one had already died and whose legal representatives were already on the record of the trial court, the application dated 23.4.2003 was filed which has been dismissed by the impugned order of the High Court. One of the main reasons for the mistake according to the appellants was that the name of the legal representatives was not shown in the judgment and the decree of the trial court which continued to show the name of the dead respondent despite legal representatives having been brought on record. It also appears that even after the report had been received about the non-service on respondent no.2 on account of his having died, the appellant, took some time in filing the application. Despite it, on the facts and circumstances of the case, no malafides can be attributed to the appellants though they should have been more vigilant. But having regard to the facts of the case that there were other respondents, namely, brothers of Shri Kharta Ram who were already party respondents in the High Court appeal, the mistake committed by the appellants in filing the application with some delay ought to have been allowed and delay condoned by imposing some reasonable amount of cost. # In this view, setting aside the impugned judgment, we allow the application of the appellants filed before the High Court for bringing on record the legal representatives of Shri Kharta Ram as sought for in that application subject to the payment of cost of Rs. 10, 000/- by the appellant to the respondents. The appeal is allowed accordingly.