

CHAPTER VII

Appointment of Guardians and Substitution of Legal Representatives

1. The provisions of Chapter VI shall apply, so far as may be, to applications for the appointment of guardians and for the bringing on the record of legal representatives of deceased parties.
2. When a guardian *ad litem* of a minor respondent is appointed and it appears that the guardian is not in possession of any or sufficient funds for the conduct of the appeal on behalf of the respondent and that the respondent will be prejudiced in his defence thereby, the appellant may from time to time be ordered to advance money to the guardian for the purpose of his defence and all money so advanced shall from part of the costs of the appellant in the appeal. The order shall direct that the guardian shall, as and when directed, file in Court an account of money so received by him.
3. A party to a decree or order desiring to appeal therefrom and to make the legal representative of a party who has died after the date of such decree or order a respondent may, if such legal representative has not been made a party to any subsequent proceedings under such decree or order, enter his name as a respondent in the memorandum of appeal if he presents therewith an application for leave to make such legal representative a respondent to the appeal and also an affidavit stating such facts as may be necessary in support of his application.
4. A party to a decree or order desiring to appeal therefrom and to make the legal representative of a party who died before the decree or order was made a respondent may, if such legal representative has not been made a party to any subsequent proceedings under such decree or order, enter his name as a respondent in the memorandum of appeal if he presents therewith an affidavit showing that he did not know before the decree or order was made that such party had died or that he had no reasonable opportunity of informing the Court before such decree or order was made that such party was dead and stating such other facts as may be necessary in support of his application.
5. Whenever by a decree or order which is appealable to the High Court the interest of-
 - (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 a party to such 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 subsequent 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 application.

6. Whenever after a memorandum of appeal has been presented to the Court any appellant or party interested in the maintenance of an objection under Order XLI, Rule 22 or 26 of the Code of Civil Procedure ascertains that any party named in the memorandum of appeal had died before the appeal was presented he may apply for an order that the memorandum of appeal be amended by substituting for the person who is dead his legal representative if along with his application he files an affidavit showing that the application is made with all reasonable diligence after the fact of the death of such persons first came to his knowledge or to the knowledge of his agent, if any, acting on his behalf in the litigation.
7. The Registrar may allow a reasonable time for the presentation of the affidavit required by Rules 3, 4, 5 and 6 if it appears to him that the applicant could not, by the exercise of due diligence, have procured such affidavit in time for presentation along with his application.
8. Rules 2 to 7 shall, as far as may be, apply to appeals under Article 4 of the Orissa High Court Order, 1948, read with clause 10 of the Letters Patent constituting the High Court of Judicature at Patna, to applications for review or revision and to applications under Article 228 of the Constitution and the cases transferred thereunder.
