

In the Court of Munsif, Bakhri, Begusarai.
Title Suit Case No. 302/1988
Yugal Sharma and others..... Plaintiffs
Vs.
Rameshwar Sahni and others..... Defendants.

Order:-

1. The petition under Order 22 Rule 4 and 9 of and under Section-151 of CPC is filed by the defendant on 16.01.2026. Suit is sub judice before this Court. Bhola Devi @ Nilam Devi, W/o- Late Rameshwar Sahni substituted defendant No.-1 has died during the pendency of this suit as reported by the concerned defendant on dated: 08-12-2025. The concerned defendant did not disclosed actual date death of substituted defendant Nilam Devi @ Bhola Devi. Though the defendant has given details of heirs and successors of Nilam Devi @ Bhola Devi. The defendant should have furnished the date of death of Nilam Devi @ Bhola Devi, which, according to law is expected from this defendant. It is essential to expunge the name of Bhola Devi @ Nilam Devi and substitute the names of her legal heirs in her place-

1A. Meena Devi, W/o- Late Vishnudev Sahni, D/o- Late Rameshwar Sahni, R/o- Vill-age- Bara, PS- Khodawandpur, Dist.- Begusarai.

1B. Meera Devi W/o- Janardan Sahni, D/o- Late Rameshwar Sahni R/o- Vill+PO+PS- Pakuria, Dist- Pakur, Jharkhand.

The defendant no-7 of the Defendant 2nd party Rameshwar Sharma also died during the pendency of this suit and this is also informed by defendant party on dated 08.12.2025. The defendant did not disclosed actual date of death of substituted Defendant No-7 of Defendant 2nd party Rameshwar Sharma. Though the defendant has given details of heirs and successors of Defendant No-7 of Defendant 2nd party Rameshwar Sharma. The defendant should have furnished the date of death of Defendant no-7 of Defendant 2nd party Rameshwar Sharma, which, according to law is expected from this defendant. It is essential to expunge the name of Defendant No-7 of Defendant 2nd party Rameshwar Sharma and substitute the names of his legal heirs in his place-

7A- Mahendra Sharma

7B- Sikandar Sharma

7C- Rani Sharma

7D- Saroj Sharma

7E- Akshay Sharma, S/o- Late Rajendra Sharma

7F- Prince Sharma, S/o- Late Rajendra Sharma

7G- Most. Shila Devi, W/o- Late Rajendra Sharma

7H- Manish Kumar, S/o- Late Maharaj Sharma

7I- Bunt Kumar, S/o- Late Maharaj Sharma

7J- Manisha Sharma, D/o- Late Maharaj Sharma

7K- Most, Karuna Devi W/o-Late Maharaj Sharma

All are resident of Vill+PO+PS- Nawakothi, Sub Division- Bakhri, Dist- Begusarai.

Due to the negligence of concerned defendant the names of deceased defendant could not be substituted earlier. For which concern defendants is solely responsible. This suit has not abated as the cause of action of plaintiff survives. These petitioners never made delay in filing the substitution petition intentionally. The petition is well within time from the date of information 08.12.2025. It is highly essential to allow this substitution petition.

Name of substituted O.P.S in place of Nilam Devi @ Bhola Devi:-

W
22/1/26

Title Suit Case No. 302/1988
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1A- Meena Devi, W/o- Late Vishnudev Sahni, D/o- Late Rameshwar Sahni
R/o- Vill-Bara, P.S- Khodawandpur, Dist- Begusarai.

1B- Meera Devi, W/o- Janardan Sahni, D/o- Late Rameshwar Sahni, R/o-
Vill+PO+PS- Pakuria, Dist- Pakur, Jharkhand .

And

Name of substituted O.P.S in place of Defendant No-7 of Defendant 2nd party Rameshwar
Sharma:-

- 7A- Mahendra Sharma
- 7B- Sikandar Sharma
- 7C- Rani Sharma
- 7D- Saroj Sharma
- 7E- Akshay Sharma, S/o- Late Rajendra Sharma
- 7F- Prince Sharma, S/o- Late Rajendra Sharma
- 7G- Most. Shila Devi, W/o- Late Rajendra Sharma
- 7H- Manish Kumar, S/o- Late Maharaj Sharma
- 7I- Bunty Kumar, S/o- Late Maharaj Sharma
- 7J- Manisha Sharma, D/o- Late Maharaj Sharma
- 7K- Most, Karuna Devi W/o-Late Maharaj Sharma

All are resident of Vill+PO+PS- Nawakothi, Sub Division- Bakhri, Dist- Begusarai.

2. The plaintiff orally objected to this petition.

3. **LAW :-**

Order 22 Rule 4 of the Civil Procedure Code (CPC) deals with Procedure in case of death of one of several defendants or of sole defendant.-(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal re presentative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

W
22/1/26

Title Suit Case No. 302/1988

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(5) Where-

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.]

Amendments: Objects and Reasons. Clause 76-Sub-clause (1) Rule 4 of Order XXII provides for the substitution of the legal representatives of the deceased defendants. The question arises as to how far the ignorance of the plaintiff as to the death of the defendant should prejudicially affect the plaintiff. Rule 4 is being substituted to provide that the plaintiff should have an opportunity to pray for an extension of the time limit for the substitution of the legal representatives of the deceased defendant if he can establish that he was ignorant of the death of the defendant. [Statement of Objects and Reasons (Bill)-Gazette of India, Ext., dt. 8-4-1974, Pt. II, S. 2, p. 326].

Clause 73 (Original clause 76)-(1) The Committee were informed during the course of evidence by various witnesses that delay in the substitution of the legal representatives of the deceased defendant was one of the causes of delay in the disposal of suits. The Committee were also informed that, as a remedial measure, the Calcutta, Madras, Kamataka and Orissa High Courts had inserted a new sub-rule in rule 4 of Order XXII to the effect that substitution of the legal representatives of a non-contesting defendant would not be necessary and the judgment delivered in the case would be as effective as it would have been if it had been passed when the defendant was alive.

The Committee are, therefore, of the view that in order to avoid delay in the substitution of the legal representatives of the deceased defendant and consequent delay in the disposal of suits, similar provision may be made in the Code itself. New sub-rule 3-A in rule 4 of Order XXII has been inserted accordingly. (ii) The committee note that the Limitation Act, 1963, specifies the period of limitation. The committee feel that the expression "prescribed period, as provided in the Limitation Act, 1963 used in clause (a) if tge bew orioised syv-rule (4) in rule 4 of order XXII is not correct and and has, therefore, been amended accordingly. [Report of the Joint Committee Gazette of India, Ext., dt. 1-4-1976, Pt. II, S. 2, p. 804/17.1 (ii) The Committee note that the Limitation Act, 1963, specifies the period of limitation.

High Court Amendment-[Punjab, Haryana and Chandigarh)-(1) In rule 4. sub rule (3) shall be substituted as follows:-

"(3) Where within the time limited by law no application is made under sub rule (1) the suit shall not abate as against the deceased-defendant and judgment be pro nounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place."

namely:-

(ii) In rule 4 the following shall be inserted as sub-rules (4), (5) and (6),

Title Suit Case No. 302/1988

Yugal Sharma and others..... Plaintiffs

Vs.

Rameshwar Sahni and others..... Defendants

"(4) If a decree has been passed against a deceased-defendant a person claiming to be his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware of the suit or that he had not intentionally failed to make an application to bring himself on the record, the Court shall set aside the decree upon such terms as to costs or otherwise as it thinks fit.

(5) Before setting aside the decree under sub-rule (4) the Court must be satisfied prima facie that had the legal representative been on the record a different result might have been reached in the suit.

(6) The provisions of section 5 of the Limitation Act, 1963 shall apply to applications under sub-rule (4)."- (11-4-1975).

Order 22 Rule 9 of CPC deals with Effect of abatement or dismissal.-(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action 2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, 1877 (15 1877), shall apply to applications under sub-rule (2). later suit, a defence based on the facts which constituted the cause of action in 81] Explanation. Nothing in this rule shall be construed as barring, in any the suit which had abated or had been dismissed under this Order.]

Amendments: Objects and Reasons. -Clause 76-Sub-clause (iv)-Under sub-rule (1) of rule 9. a fresh suit is barred when a suit abates or is dismissed for the non-substitution of the legal representatives of any of the deceased parties. It is not, however, clear as to whether the cause of action of the abated suit may be invoked as a defence in a subsequent suit. An Explanation is being added to the rule to provide that abatement or dismissal of the suit should not operate as res judicata. [Statement of Objects and Reasons (Bill)-Gazette of India Ext., dt. 8-4-1974, Pt. II, S. 2, p. 327.

Section 151 of C.P.C

Saving of inherent powers of Court.- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.

4. Discussion and Decision on Petition:- In the light of the petition of the defendant application under order 22 Rule 4 and 9 r/w section 151 of CPC is allowed to expunge the name of his/her legal heirs of expunge party as follow-

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22/1/26

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Name of substituted Defendant No-7 of Defendant 2nd party Rameshwar Sharma and substitute the name of his legal heirs in his place as follow:-

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- 7K- Most, Karuna Devi W/o-Late Maharaj Sharma

All are resident of Vill+PO+PS- Nawakothi, Sub Division- Bakhri, Dist- Begusarai.

Kishal Sinha .
Munsif
Civil Court, Bakhri,
Begusarai.
Date:- 22.01.2026