

Date on which the case was reserved for order : - 09.01.2026
Date on which order was pronounced: - 20.01.2026

In the Court of Principal District Judge, Garhwa.

Present:- ***Manoj Prasad,***
Principal District Judge,
Garhwa.

Dated, Garhwa the 20th day of January 2026.

Civ. Misc. Appl. No. 06/2025
CNR-JHGW01-004319-2022

1. Bunu Siddiqui W/O- Late Abid Ali Siddiqui
aged about 65 years,
2. Quemar Abid S/O- Late Abid Ali Siddiqui
aged about 44 years,
all R/O- village- Talasbariya,
P.O-P.S- Manjhiaon, District- Garhwa
At present house no. 7 Ward NO. 2, Mahamaya School,
Road Jarahi, P.S- Bhatgoan,
District- Surajpur (Chhatisgarh)
4. Sumaya Abid W/O- Akhtar Shamim Khan,
aged about 42 years
R/O A-101, Gali No.10 Shahin Bag Thakar No. 6,
Abul Fazal Enclave Part-2 Namia Okhla,
South Delhi-1100025
5. Arwi Abid W/O- Allamash Egbal aged about 40 years,
R/O- A-101, Shaheen Bagh, Abdul Fazal Enclave,
South Delhi, New Friend Colony Delhi-110025
6. Md. Qudush Siddiqui S/O- Late Sheikh Ahmad Ali Siddiqui,
aged about 66 years, R/O- village- Talasbariya,
P.O-P.S-Manjhiaon, District- Garhwa
At present:- Bhatgaon,
District- Surajpur (C.G)
7. Jafa Ali Siddiqui S/O- Late Sheikh Ahmad Ali Siddiqui
aged about 65 years, R/O- village- Talasbariya,
P.O-P.S-Manjhiaon, District- Garhwa
At present:-
Mahamaya School,
Road Jarahi, P.S- Bhatgoan,
District- Surajpur (Chhatisgarh)

8. Sadik Ali Siddiqui S/O- Late Sheikh Ahmad Ali Siddiqui
aged about 62 years,
9. Majid Ali Siddiqui S/O- Late Sheikh Ahmad Ali Siddiqui
aged about 60 years
both resident village Talasbariya, P.O-P.S- Manjhiaon,
District – Garhwa
Both at present resided at Bhatgaon,
District- Surajpur (C.G)
10. Anis Ahmed
- 10(a). Rashid Ahmed
- 10(b). Yasin Arafat
All sons Late Gafiya Siddiqui
- 10(c). Nasrin Anjum
D/O- Late Gafiya Siddiqui
All R/O- village- Chetna,
P.O-P.S-District- Garhwa (Jharkhand)

..... Appellants.

V e r s u s

1. Naseem Arra W/O- Late Sarwar Ali,
2. Mohsin,
3. Mohtasim
both S/O- Late Sarwar Ali,
R/O- village-Talasbariya,
P.O-P.S-Manjhiaon, District- Garhwa
4. Khusnuma W/O- Touqir
R/O- village- Ghuruwa,
P.O-P.S- Manjhiaon, Garhwa
5. Asgar Ali,
6. Anwar Ali
7. Ahsanul Haque
all S/O- Late Sheikh Asharaf Ali
R/O- village-Talasbariya,
P.O-P.S-Manjhiaon, District- Garhwa
8. Nooreshba W/O- Anzar
R/o- village- Darmi,
P.S-District- Garhwa,
9. Sheikh Inamul S/O- Mursalim Khan @ Kudus
10. Rukhsana W/O- Sahid,
R/O-village- Ghuruwa Khurd,
P.O-P.S-Manjhiaon, Garhwa

11. Nasim W/O- Samsad
R/O-village- Ghuruwa Khurd,
P.O-P.S-Manjhiaon, Garhwa
12. Sifat W/O- Neyaz
R/O- village- Bigha, P.O-P.S-Haider Nagar,Palamau
13. Yasmin D/O- Mursalim @ Qudus
14. Shaukat Ali S/O- Sheikh Qudus
R/O- village- Ghuruwa Khurd
P.O-P.S-Manjhiaon, Garhwa
15. Sahida Khatoon W/O- Gaffar Khan
R/O-village-Subdar, P.O-Japla,
P.S-Hussainabad, District- Palamau
16. Bibi Lailun W/O- Sheikh Mumtaz
17. Sheikh Hidayat,
18. Sheikh Safayat,
19. Sheikh Rahatulla
20. Sheikh Md. Irfan
all S/O- Late Sheikh Kabedin,
R/O- village- Ghuruwa Khurd
P.O-P.S-Manjhiaon, Garhwa
21. Shida Khatoon W/O- Rafi Ahmad Khan
R/O-village- Talasbariya, P.O-P.S-Manjhiaon, Garhwa
22. Tasdiqun Nisa D/O- Late Sheikh Khabeddin,
R/O- village-Babhani, P.O-P.S-Manjhiaon, Garhwa
23. Bibi Asrun W/O- Late Sheikh Kabedin
R/O- village- Ghuruwa Khurd
P.O-P.S-Manjhiaon, Garhwa
24. Ishteyak,
25. Hafiz,
26. Sahban
S/O- Late Mustaque Ahmad
27. Sheikh Jamil Ahmad,
28. Sheikh Afroz Ahmad,
29. Sheikh Jalil Ahmad
all S/O- Late Sheikh Nayeemuddin
30. Amirun Bibi W/O- Sheikh Hedayat,
31. Munni Bibi D/O- Sheikh Nayeemuddin,
all R/O- village- Ghuruwa Khurd
P.O-P.S-Manjhiaon, Garhwa
32. Sheikh Mumtaz S/O- Late Sheikh Nayeemuddin
R/O- village- Ghuruwa,P.O-P.S-Manjhiaon, Garhwa

33. Sheikh Jamil S/O- Late Sheikh Nayeemuddin
R/O- village- Talasbariya, P.O-P.S-Manjhiaon, Garhwa
34. Sheikh Afroz
35. Sheikh Jaleel
both S/O- Late Sheik Nayeemuddin
36. Shafin,
- 36(a) Shahban
both S/O- Late Sheikh Mustaque
- 36(b). Yasiya W/O- Wajid
all R/O- village- Babhani,P.S-Manjhiaon, Garhwa,
37. Sheikh Imamudin
38. Sheikh Reyajuddin
both S/O- Late Nayaz Ahmad,
39. Sahidan Nisha W/O- Imamuddin,
R/O- village-Babhani,P.S-Bardiha, Garhwa
40. Salim Khan,
41. Alim Khan
both S/O- Fakhruddin Khan
R/O- village-Karcha, P.O-Dumariya, P.S-Dist-Garhwa
42. Hazi Samsuddin,
43. Samsad
both S/O- Siddique Khan
44. Sheikh Md. Zaman
45. Sheikh Sahmad zaman
46. Sheikh Zahrudin
all S/O- Late Ali Karim,
47. Bibi Mehrun Nisha W/O- Samsuddin Khan
48. Bibi Sahrin W/O- Sheikh Samim
all R/O- village- Ghuruwa Khurd
P.O-P.S-Manjhiaon, Garhwa
49. Khursid,
50. Taukir,
51. Izhar,
52. Danish
all S/O- Late Qamrun Zaman
R/O- village- Ghuruwa Khurd
P.O-P.S-Manjhiaon, Garhwa,
53. Sheikh Qudus S/O- Late Sheikh Hanif,
55. Rabiha Khatoon W/O- Ashraf Ali
R/O- village-Talasbariya,P.O-P.S-Manjhiaon, Garhwa
56. Zabiha Khatoon W/O- Qudush Khan

R/o- village- Darmi, P.O-Belchampa,
P.S-District- Garhwa
57. Sadruddin Khan,
57(a). Anul Haque
57(b). Samsool Hoda
all S/O- Sher Mohammad Khan,
R/O- village- Ghuruwa Khurd
P.O-P.S-Manjhiaon, Garhwa
57(c). Asani W/O- Late Sheikh Abu Sohma
R/O- village-R/O- village- Ghuruwa Khurd
P.O-P.S-Manjhiaon, Garhwa
57(d). Sarwari W/O- Late Abdul Rauf
R/O- village-Sabnawa, P.O-Kosiara,
PS-Mohammadganj, Dist- Palamu
57(e). Mosrat Khatoon W/O- Shamsad
R/o- village-Ghuruwa,
P.O-P.S-Manjhiaon,
District- Garhwa (Jharkhand)

..... Respondents.

Ld. Counsels:-

For the petitioner	:- Sri. Niranjana Chaudhary, Ld. Adv.
For the respondents	:- Sri Pramod Kumar, Ld. Adv. Md. Abdul Aziz, Ld. Adv.

ORDER

1. The present appeal has been filed against the order dated 09.02.2022 passed by the Court of Ld. Civil Judge (Sr. Div.)-I Garhwa in OS 41/2000 whereby and whereunder the Ld. Trial Court by the impugned order dismissed the application for substitution and also ordered to deposit the record in the Record Room, Garhwa as per rules.

2. Initially against the impugned order Civil Appeal was filed and registered as Civil Appeal no. 12/2022 and since then the record was pending for hearing on the point of admission and as there

was a delay of 197 days in filing of the appeal, order was passed for issuance of notice to the respondent and the case was pending for appearance of the respondents. During pendency of the civil appeal registered as C.A 12/2022 some of the respondents died and substitution was also allowed a notice to those substituted respondent was also issued. However the record continued for hearing on the point of admission and also appearance. Finally when this case was taken up by this Court it was pointed out that this not an appeal against the judgment and decree rather the appeal was in terms of order XLI rule 1(k) and as such could not have been registered as Civil Appeal and accordingly it was ordered to re-register the appeal as Misc. Appeal by order dated 10.11.2025 and thereafter the present appeal has been re-registered as Civil Misc. Appeal 06/2025 and the case was put up for hearing on the point of maintainability as to whether the impugned order is appealable order as stated by the appellant in the memo of appeal purporting to be in terms of order XLI rule 9 CPC. It is important to mention that provision has wrongly been mentioned to be rule 9, it is rule 1(k).

Arguments on behalf of the Appellant:-

3. Ld. Advocate appearing on behalf of the appellant submits that the impugned order is an order whereby application for substitution was dismissed and also an application for setting aside the abatement by implication was dismissed. It is stated that order for setting aside an abatement if dismissed is an appealable order in terms

of order XLI rule 1(k) and therefore the present civil misc. appeal is maintainable.

Arguments on behalf of the Respondents:-

4. Per contra, Ld. Advocate appearing on behalf of the some of the respondents has stated that the impugned order is a non-appealable order as it is not an order rejecting application for setting aside abatement rather it is an order whereby the application for substitution was dismissed and hence it is submitted that the appeal is not maintainable under law.

Findings:-

5. Heard the parties and perused the record. The Trial Case record is also available before this Court. By the impugned order the Ld. Trial Court has observed as hereunder:-

“from a perusal of order dated 19.06.2012 it appears that original record was received but plaintiff did not take step for substitution. This is the case of the year 2000. Petition for hearing on substitution is pending since 01.12.2011. It appears that the petitioners were not interested to proceed further but interested in keeping the case pending on different grounds. Petition for substitution is still incomplete and still no step has been taken to remove the defects in the petition. There appears no reasonable ground to keep the suit pending for indefinite period and allow further adjournment. The petitioners has not placed any sufficient ground to adjourn further. Therefore application dated 01.12.2011

and 21.01.2021 for substitution is disposed as not allowed and not pressed respectively. Office is directed to deposit the record in the Record Room, as per rule.”

The impugned order has been passed dismissing the application dated 01.12.2011 and disposing of the application dated 21.01.2021 as the second application was disposed of being not pressed. As the Ld Trial Court record was called for, this Court has occasion has to look into the petition filed by the plaintiff. The record discloses that various persons died during the final decree proceeding and information was given on 03.08.2016, but no substitution petition was filed. Sub-sequently again information was given but to no effect. Subsequently other applications were filed which remained pending. The petition dated 01.12.2011 was filed on behalf of Abid Ali Siddiqui, Mohammad Qudush Siddiqui, Zafar Ali Siddiqui, Sadik Ali Siddiqui, Wajid Ali Siddiqui all sons of Ahmed Ali Siddiqui and Gafiya wife of Gaysuddin which application u/o XXII Rule 1,2 and 3 of the CPC. It was stated therein the suit was instituted by Most. Bandi, which was a partition suit, which was decided on 28.03.2006 and decree was prepared on 17.04.2006. However the sole plaintiff died on 28.08.2008 and the petitioners as the legal heirs and successors of Sheikh Mohammad Ali Siddiqui and Most. Bandi, who were working outside of State in search of livelihood has filed an application for substitution. **Thus the application dated 01.12.2011 appears to be an application for substitution of the sole plaintiff who died in the year 2008.**

Another application was filed on 21.01.2021 mentioning therein that Abid Ali Siddiqui (son of the original plaintiff) died leaving behind five legal heirs in the year 2020, but because of the Lock Down application for substitution could not be filed on time and prayer is made to implead the legal heirs of Abid Ali Siddiqui as parties to the suit alongwith the application u/s 5 of the Limitation Act was filed stating therein because of the COVID there was delay in filing of the application for the substitution. **However this application for substitution was subsequently not pressed as an endorsement to that effect is there on the record and the same was disposed off as not pressed.** This order under no circumstance can be challenged by filing appeal as it was disposed of as not pressed. *So far the first petition is concerned, the said petition also became infructuous as the person who was proposed to be substituted had also died as it is apparent from the petition of the year 2021 and so there was no occasion to pass an order for substitution of a deceased plaintiff by another deceased legal heir.* It appears that the plaintiff was not keen in taking any step on time for substitution and therefore their application was disposed which can not be considered to be an application for setting aside an order of abatement. Ld. Counsel has placed reliance on a couple of case law of Guwahati High Court where the Hon'ble High Court has observed that the provision of the code are to advance the cause of justice and a party can not be allowed to suffer on account of technicalities and held that an application u/o 22, rule 11,

rule 4A read with section 151 CPC should also be treated as the application for setting aside the abatement.

6. In the present case the application which has been dismissed was not an application u/o 22 rule 10A or 4A rather it was an application for substitution in terms of rule 1,2 and 3 and order passed on such application is not an appealable order in terms of order XLI rule 1 of the CPC. It also appears that no application was filed to the application for substitution to condone the delay in filing of the said application. Another case law has been referred reported in AIR 962 Orrisa page-94 which is also on the same point and also the judgment of Mumbai High Court reported in AIR 1959 Bombay page -384.

7. The only point for determination at this stage before this Court is whether the order impugned is appealable order or not and mandate of law is settled that only such order will be considered to be appealable against which the remedy of appeal is prescribed in the CPC or any other statute. ***Dismissal of an application for substitution is a non-appealable order therefore without entering into the merits of the case this Court is of the considered view that the impugned order is a non-appealable order and accordingly the present appeal is not maintainable. The same is accordingly dismissed.***

(Dictated and corrected by me)

(**Manoj Prasad**)
Pr. District Judge, Garhwa.
20.01.2026

(**Manoj Prasad**)
Pr. District Judge, Garhwa.
20.01.2026