



2026:CGHC:12995

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

REVP No. 109 of 2020

{Arising out of judgment dated 21-2-2019 passed in S.A.No.129/2002}

Madhusudan, S/o Sundar Sai (dead) through Legal Heir:
Smt. Champa, W/o Late Madhusudan, aged about 55 years, R/o
Munund, Tehsil Dharamjaigarh, Dist. Raigarh, C.G.

(Legal heir of defendant No.1)

... Petitioner

versus

1. Pratap Singh Rathiya (dead) through Legal Heirs:-

1.A. Smt. Gajmati, W/o Late Pratap Singh Rathiya, aged about 60 years,

1.B. Pancham, S/o Pratap Singh Rathiya, aged about 40 years,

(Non-applicant No.1A and 1B legal heirs of plaintiff No.1)

2. Bhajan Singh Rathiya, S/o Thakur Ram, 69 years,

3. Madan Singh Rathiya, S/o Thakur Ram, aged about 65 years,

4. Ramchandra Singh, S/o Thakur Ram, aged about 58 years,

All are residents of Munund, Tehsil Dharamjaigarh, Dist. Raigarh, C.G.

5. Smt. Lelamati, W/o Nandlal, aged about 52 years, R/o Village Nagaoi, Tehsil Kharsiya, Dist. Raigarh, C.G.

(Plaintiffs)

6. Rajkumar, S/o Sunder Sai, aged about 51 years,

7. Ramkumar, S/o Sunder Sai, aged about 49 years,

(Non-applicant No.6 and 7 are residents of Munund, Tehsil Dharamjaigarh, Dist. Raigarh, C.G.)



8. State of C.G. through the Collector, Raigarh, C.G.
(Non-applicants No.6 to 8 were defendants)
... Respondents

For Petitioner	: Mr. Rajendra Tripathi, Advocate.
For Respondents No.1A to 5	: Mr. Shivendra Bharadwaj, Advocate.
For Respondents No.6 & 7	: Mr. Abhishek Saraf, Advocate.
For Respondent No.8/State	: Dr. Surendra Kumar Dewangan, Panel Lawyer.
<i>Amicus Curiae</i>	: Mr. Manoj Paranjpe, Senior Advocate with Mr. Kabir Kalwani, Advocate.

Single Bench:-
Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

18/03/2026

1. This review petition is directed for reviewing the judgment dated 21-2-2019 passed in S.A.No.129/2002 by which the appeal filed by respondents No.1 to 5 herein/plaintiffs has been allowed and decree of the trial Court has been restored.
2. The review petition has been filed on the following factual backdrop:-
3. Late Pratap Singh Rathiya – respondent No.1 herein/plaintiff No.1 and three brothers had filed second appeal before this Court being S.A.No.129/2002 against Late Madhusudan – petitioner herein, Rajkumar & Ramkumar – defendants. The said appeal came up for hearing on 13-2-2019, however, in the meanwhile, Pratap Singh Rathiya – plaintiff No.1 died on 24-9-2009 and Madhusudan – defendant No.1 and husband of the petitioner herein, also died on 6-11-2013. However, in compliance of Order 22 Rule 10A of the CPC, none of the counsels appearing on behalf of the plaintiffs and the defendants informed the Court with regard to death of either plaintiff



- No.1 or defendant No.1. The arguments were heard on 13-2-2019 and the judgment was delivered on 21-2-2019 allowing the appeal.
4. Thereafter, now, on 13-7-2020, Smt. Champa – wife of original plaintiff No.1 Madhusudan, filed review petition stating that since her husband Madhusudan had already died on 6-11-2013 and Pratap Singh Rathiya – defendant No.1 also died on 24-9-2009, the second appeal had already abated and the decree passed therein is a nullity. Notices were issued and Mr. Manoj Paranjpe, Senior Advocate, was appointed as *amicus curiae* to assist the Court.
 5. Mr. Rajendra Tripathi, learned counsel appearing on behalf of the petitioner herein/legal heir of defendant No.1, would submit that on account of the death of plaintiff No.1 and defendant No.1 much prior to the date of judgment in second appeal, the decree passed therein is a nullity and therefore it is liable to be set aside.
 6. Mr. Shivendra Bharadwaj, learned counsel appearing on behalf of respondents No.1A to 5 herein/plaintiffs, and Mr. Abhishek Saraf, learned counsel appearing on behalf of No.6 & 7 herein/defendants No.2 & 3, would support the decree under review and oppose the review petition.
 7. Mr. Manoj Paranjpe, learned Senior Counsel appearing as *amicus curia*, would submit that since the brothers of late Madhusudan (original defendant No.1) namely, Rajkumar & Ramkumar – defendants No.2 & 3, both were also defending the joint interest of all the three brothers and brothers are Class II heirs under Section 8 of



the Hindu Succession Act, 1956 (for short, 'the Act of 1956'), they were effectively representing the estate of the deceased (late Madhusudan) and as such, the appeal does not abate and the decree passed therein is not a nullity. He would further submit that brothers of late Pratap Singh Rathiya (original plaintiff No.1) namely, Bhajan Singh Rathiya, Madan Singh Rathiya & Ramchandra Singh – plaintiffs No.2 to 4, being Class II heirs of the deceased (late Pratap Singh Rathiya) under Section 8 of the Act of 1956, were also effectively representing the estate of the deceased, as such, the appeal does not abate. In that view of the matter, there is no error apparent on the face of record and therefore the review petition deserves to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.
9. True it is that before the second appeal was heard on 13-2-2019 and before the judgment was delivered on 21-2-2019, original plaintiff No.1 Pratap Singh Rathiya died on 24-9-2009 and original defendant No.1 Madhusudan died on 6-11-2013, however, the fact of death of plaintiff No.1 Pratap Singh Rathiya and defendant No.1 Madhusudan was not brought to the notice of the Court by the learned counsel for the parties, though the parties especially, both the deceased persons, were duly represented by the counsels and thus, there was non-compliance of Order 22 Rule 10A of the CPC.



10. The provisions of Order 22 Rule 10A of the CPC are directory in nature since no penalty or other consequences are contemplated under the rule for failure to comply with the same, yet it was a solemn duty cast on the lawyer of a party to inform the court about the death of that party.
11. However, in the present case, since the estate of defendant No.1 Madhusudan was duly represented by his two brothers namely, Rajkumar & Ramkumar who are Class II heirs and similarly, the estate of original plaintiff No.1 Pratap Singh Rathiya was also duly represented by his three brothers namely, Bhajan Singh Rathiya, Madan Singh Rathiya & Ramchandra Singh who are also Class II heirs, the second appeal had not abated on the date of delivery of judgment i.e. 21-2-2019.
12. In this regard, the decision of the Supreme Court in the matter of **Collector of 24 Parganas and others v. Lalith Mohan Mullick and others**¹ may be noticed herein in which in identical fact-situation where the estate of the deceased was represented by other heirs, their Lordships held that the estate of the deceased was sufficiently represented before the Court and the appeal had not abated, and observed as under: -

“1. This review petition has been instituted on the plea that original Respondent 2 Smt Sibadasi Mullick, widow of Shri Krishna Mohan Mullick had died during the pendency of the appeal in this Court and that original Respondent 5 Smt Kamalini Mullick, widow of Shri Khirode Mohan Mullick had also died during the pendency of the appeal in this Court which was disposed of on merits by a judgment and order dated 13-2-

¹ 1988 Supp SCC 578



1986² after hearing the parties. So far as Smt Sibadasi Mullick, widow of Shri Krishna Mohan Mullick is concerned, her two sons viz. Lakshmi Kanto Mullick and Nilkanto Mullick were already on record as Respondents 3 and 4. Therefore, the estate of the deceased was sufficiently represented before this Court. So far as Respondent 5 Smt Kamalini Mullick, widow of Shri Khirode Mohan Mullick is concerned, her son Ramendra Mullick was already on record as Respondent 6. In her case also the estate was sufficiently represented. Under the circumstances it is not possible to uphold the plea that the appeal had abated and the judgment on merits rendered by this Court on 13-2-1986 requires to be set aside on this ground.”

13. Similarly, the Supreme Court in the matter of **Shivshankara and another v. H.P. Vedavyasa Char**³ held that non-substitution of the legal representatives of the deceased defendant would not abate the appeal when the estate/interest was being fully and substantially represented in the suit jointly by the other defendants along with the deceased defendant and when they are also his legal representatives, and it has been observed as under: -

“**56.** As noticed earlier, the appellants have also contended that the suit ought to have been held as abated against all the defendants owing to non-substitution of all the legal representatives of the deceased Defendant 3 upon his death. This contention is bereft of any basis and merits and was rightly repelled by the courts below. In that regard it is to be noted that the first appellant and deceased second appellant as also their father Hanumaiah were all arrayed in the suit as defendants and they were jointly defending the suit. Upon the death of original third defendant viz. Hanumaiah the original Defendants 1 and 2, who are sons of the original Defendant 3 fully and substantially representing the joint interest contested the suit and, thereafter, after suffering an adverse judgment and decree in the suit diligently preferred the appeal before the High Court which ultimately culminated in the impugned judgment and decree. Even thereafter, obviously they are diligently prosecuting the joint interest, even if the contention

² (1986) 2 SCC 138

³ (2023) 13 SCC 1



of joint interest is taken as correct, by filing the captioned appeal.

57. In the contextual situation the following decisions assume relevance. The decision in *Bhurey Khan v. Yaseen Khan*⁴ was referred to in the impugned judgment by the High Court to reject the aforesaid contention of the appellants therein viz. original Defendants 1 and 2. In para 4 of the decision in *Bhurey Khan*, this Court held thus : (SCC p. 332)

“4. ... The estate of the deceased was thus sufficiently represented. If the appellant would not have filed any application to bring on record the daughters and the widow of the deceased the appeal would not have abated under Order 22 Rule 4 of the Code of Civil Procedure as held by this Court in *Mahabir Prasad v. Jage Ram*⁵. The position, in our opinion, would not be worse where an application was made for bringing on record other legal representatives but that was dismissed for one or the other reason. Since the estate of the deceased was represented the appeal could not have been abated.”

58. In the decision in *State of A.P. v. Pratap Karan*⁶, this Court held : (SCC pp. 99-100, para 40)

“40. In the instant case, the plaintiffs joined together and filed the suit for rectification of the revenue record by incorporating their names as the owners and possessors in respect of the suit land on the ground inter alia that after the death of their predecessor-in-title, who was admittedly the pattadar and khatadar, the plaintiffs succeeded the estate as sharers being the sons of khatadar. Indisputably, therefore, all the plaintiffs had equal shares in the suit property left by their predecessors. Hence, in the event of death of any of the plaintiffs, the estate is fully and substantially represented by the other sharers as owners of the suit property. Therefore, by reason of non-substitution of the legal representative(s) of the deceased plaintiffs, who died during the pendency of the appeal in the High Court, entire appeal shall not stand abated. Remaining sharers, having definite shares in the estate of the deceased, shall be entitled to proceed with the appeal without the appeal having been abated. We, therefore, do not find any reason to agree with the submission made by the learned counsel appearing for the appellants.”

4 1995 Supp (3) SCC 331

5 (1971) 1 SCC 265

6 (2016) 2 SCC 82 : (2016) 1 SCC (Civ) 595



59. We are of the considered view that the same analogy is applicable in a case where even in the event of death of one of the defendants, when the estate/interest was being fully and substantially represented in the suit jointly by the other defendants along with the deceased defendant and when they are also his legal representatives. In such cases, by reason of non-impleadment of all other legal heirs consequential to the death of the said defendant, the defendants could not be heard to contend that the suit should stand abated on account of non-substitution of all the other legal representatives of the deceased defendant.

60. In this case, it is to be noted that along with the deceased third defendant the original Defendants 1 and 2 were jointly defending their joint interest. Hence, applying the ratio of the aforesaid decision and taking into account the fact that the appellants/the original Defendants 1 and 2 despite the death of original Defendant 3 defended the suit and preferred and prosecuted the first appeal. Upon the death of the second appellant the joint interest is being fully and substantially taken forward in this proceeding as well by the first appellant along with the substituted legal representatives of the deceased second appellant, we do not find any reason to disagree with the conclusions and findings of the courts below for rejecting the contention that the suit ought to have held abated owing to the non-substitution of all the legal heirs of deceased third defendant against all the defendants. For the same reason, the contention that the suit was bad for non-joinder of necessary parties of all his legal heirs/representatives also has to fail.”

14. In the instant case, it is quite established that the estate/interest of deceased defendant No.1 Madhusudan – husband of the petitioner herein, was fully and substantially taken forward by the other defendants, who were party respondents/defendants in the second appeal being Class II heirs and similarly, though Pratap Singh Rathia, one of the plaintiffs being plaintiff No.1, died, but his three brothers namely, Bhajan Singh Rathia, Madan Singh Rathia & Ramchandra Singh were already on record being Class II heirs and estate of deceased Pratap Singh Rathia was sufficiently represented.



As such, it cannot be held that the second appeal preferred by the plaintiffs had abated on the date of hearing of the appeal as also on the date on which the judgment was delivered in the appeal and thus, the decree passed cannot be held to be a nullity. Accordingly, I do not find any error apparent on the face of record warranting review of the judgment dated 21-2-2019 passed by this Court in S.A. No.129/2002. The review petition deserves to be and is hereby dismissed subject to payment of cost of ₹ 2,000/- which shall be deposited before the High Court Legal Services Authority within 15 days from the date of receipt of a copy of this order.

15. This Court appreciates the assistance rendered by Mr. Manoj Paranjpe, learned Senior Advocate, who on short notice appeared as *amicus curiae*.

Sd/-
(Sanjay K. Agrawal)
Judge