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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 2396/2007

SMT. ABHA GUPTA & ANR

.....Plaintiffs

Through: Mr. Danish Aftab Chowdhury,
Adv. (joined through VC).

Versus

SMT. RASHMI NAGRATH & ORS.

.....Defendants

Through: Mr. Ninad Dogra, Adv. for
D-1&3 (joined through VC).

None for D-2.

Mr. Ankit Monga, Adv. for
D-4,6&7 (joined through VC).

Mr. Vipin Gogia, Ms. Jaspreet
Gogia, Ms. Varnika Gupta & Mr.
Karanvir Gogia, Advs. for
proposed D-5 (joined through
VC).

Mr. Vivek B. Saharya & Mr.
Nishant, Advs. for LRs of
D-12&13 (Mob. 9811156831).

CORAM:

**JOINT REGISTRAR (JUDICIAL) MS. PREETI
PAREWA, (DHJS)**

ORDER

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18.12.2025

**I.A.No.7839/2024 (under Order XXII Rule 4 CPC filed
on behalf of the plaintiff to bring on record the LRs of
defendant no.5).**

1. By way of the above captioned IA, the plaintiffs seek to bring on record the legal representatives of defendant No. 5, late Sh. Jai Dev Nagrath.

2. Vide order dated 27.08.2025, the Hon'ble Court has directed this Court to expeditiously decide the captioned IA.

3. The present suit is a suit for partition and injunction. It is admitted that defendant No. 5 expired on 17.02.2021 leaving behind his son Shri Ajay Nagrath (already on record as defendant No. 8) and his two daughters, Ms.



Madhu Gupta and Ms. ~~Gita~~ Nagrath, as his legal heirs. That, his wife and mother had predeceased him. The plaintiffs assert that they became aware of his death only on 23.01.2024 during hearing when counsel for defendants 4, 6 and 7 so informed the Court and that no particulars of the date of death or of the legal representatives were given to them.

4. *Per contra*, the proposed LRs oppose above captioned IA contending that the plaintiffs had knowledge of the death since 2021 from connected Supreme Court proceedings. That, the suit has abated qua defendant No. 5 and his LRs by efflux of time in terms of Order XXII, and that the application is barred by limitation and is an abuse of process. [Reliance is placed on *Madan Naik (Dead) by LRs vs Mst. Hansubala Devi & Ors.*, (1983) 3 SCC 15].

5. Learned respective counsels for the other non-applicants have not filed any reply and have already stated that they have no objection to the above captioned IA.

6. The plaintiffs, in Rejoinder, invoke the principle that where in a proceeding a party dies and one of the legal representatives is already on record in another capacity, the proceeding does not abate merely because the remaining legal representatives are not brought on record within the period prescribed by the Limitation Act. They rely on *Mahabir Prasad vs Jage Ram*, AIR 1971 SC 742, where the Hon'ble Supreme Court held that if one legal representative is on record in another capacity, it is sufficient that he is described as LR by appropriate application and, even if other heirs are not impleaded



within time, the proceeding does not abate.

7. Support is also drawn from *N. Jayaram Reddy vs Revenue Divisional Officer & Land Acquisition Officer, Kurnool, AIR 1979 SC 1393*, wherein the Hon'ble Supreme Court summarised that:

(i) If after diligent search some legal representatives are brought on record and the Court is satisfied that the estate is adequately represented, the action would not abate; and

(ii) If a legal representative is already on record in a different capacity, failure to describe him additionally as LR of the deceased would not abate the proceeding.

8. The plaintiffs further rely on *Collector of 24 Parganas vs Lalit Mohan Mullick, AIR 1988 SC 2121*, which reiterates that where the estate of the deceased is sufficiently represented by some heirs already on record, the plea of abatement cannot be sustained. In *Karan Singh Saini vs Baljeet Singh (C.M. (Main) No. 720/2014, decided on 01.08.2014)*, the Delhi High Court held that where one legal heir of a deceased defendant is already on record, there is no issue of abatement; the question is only of adding other legal heirs. In *Dalta Chandraiah vs Kothalanka Durga Vara Prasad Rao, 2002 AIHC 4259*, the Andhra Pradesh High Court similarly held that where an heir is already on record in another capacity and the estate is represented, the proceeding does not abate and the remaining necessary parties can be added.

9. The said position has been reiterated in recent decisions. In *Shivshankara vs H.P. Vedavyasa Char, 2023*



SCC OnLine SC 358, decided on 29-03-2023, the Hon'ble Supreme Court held that a suit will not abate merely because all legal representatives of a deceased defendant have not been impleaded, if the deceased's estate was substantially represented by the parties already on record, relying inter alia on *Bhurey Khan vs Yaseen Khan, 1995 Supp (3) SCC 331* and *State of Andhra Pradesh vs Pratap Karan, (2016) 2 SCC 82*.

10. This line of authority has been recently affirmed. In *Om Prakash Gupta @ Lalloowa (Now Deceased) & Ors. vs Satish Chandra (Now Deceased), 2025 INSC 183*, the Hon'ble Supreme Court clarified that courts should not adopt a hyper-technical approach in applying Order XXII. Further, that, an application seeking substitution of legal representatives, even if filed after the period of abatement, can be construed as including a prayer to set aside abatement and for condonation of delay, and abatement provisions must be applied in a justice-oriented manner so that substantive rights are decided on merits. The Court emphasised that abatement rules are procedural and should not be used to non-suit parties where heirs have come forward and the dispute can still be effectively adjudicated.

11. Applying these principles, this Court is satisfied that the estate of late defendant No. 5 has at all times been substantially and adequately represented in this partition suit by defendant No. 8, his son and undisputed legal heir, who has been on record throughout. In a partition suit, each co-sharer is, in substance, a plaintiff, and the proceeding does not ordinarily abate as a whole on the death of one party when the estate continues to be



effectively represented before the Court.

12. The line of authority commencing with *Mahabir Prasad vs Jage Ram*, AIR 1971 SC 742 and followed in *N. Jayaram Reddy vs Revenue Divisional Officer & Land Acquisition Officer, Kurnool*, AIR 1979 SC 1393, *Collector of 24 Parganas vs Lalit Mohan Mullick*, AIR 1988 SC 2121 and the decisions of the Delhi and Andhra Pradesh High Courts clearly governs the present situation and outweighs the objection founded on *Madan Naik (Dead) by LRs vs Mst. Hansubala Devi & Ors.*, (1983) 3 SCC 15, which dealt with a case where no legal representative was already on record and the proceeding had not been effectively represented within time. Consequently, the plea of automatic abatement and of the present application being barred by limitation is misconceived and is rejected.

13. Having regard to the fact that this is an old family partition suit and that no prejudice is shown to have been caused to the proposed LRs by the delay in formal substitution, the delay, if any, in moving this application is condoned in exercise of the inherent powers under Section 151 CPC so as to secure a complete and final adjudication of the rights of all co-sharers.

14. The above captioned IA is accordingly **allowed**. The following persons are brought on record as legal representatives of deceased defendant No. 5, late Sh. Jai Dev Nagrath, for the purposes of this suit:

- (a) Shri Ajay Nagrath (already on record as defendant No. 8);
- (b) Ms. Madhu Gupta; and



- (c) Ms. Charu Nagra
15. Amended memo of parties be filed within two weeks.
 16. Above captioned IA stands disposed of accordingly.
 17. Matter may be placed before the Hon'ble Court for 05.02.2026, for further directions.

**PREETI PAREWA (DHJS)
JOINT REGISTRAR (JUDICIAL)**

DECEMBER 18, 2025/bs