

**Nand Lal vs. Krishni Devi and others a/w
connected matter
Civil Revision No. 43 of 2022 with
Civil Revision No. 70 of 2022**

Civil Revision No. 43 of 2022

24.09.2025 Present:

Mr. Manish Sharma, Advocate, for the petitioner.

Respondent No. 1 is stated to have expired.

Mr. Aman Parth, Advocate, for respondents No. 2 to 7.

Respondent No. 8 is ex parte.

Civil Revision No. 70 of 2022

Mr. Manish Sharma, Advocate, for the petitioner.

Respondent No.1 is stated to have expired.

Mr. Aman Parth, Advocate, for respondents No. 2, 4 to 8.

Mr. Bharat Thakur, Advocate, for respondent No. 3.

CMP No. 22888 of 2025 in CR No. 43 of 2022

No reply is intended to be filed on behalf of the contesting respondents. Respondent No.1 is stated to have died on 17.4.2024. The fact is evident from the death certificate appended alongwith the present application. In the application, it is averred that the legal heirs of deceased are already exit on record as respondents No. 2 to 7. Further it has been averred in para 4 of the application that there is one legal representative i.e. the daughter of the predeceased son of the deceased respondent No.1 who has now got married, and the address of the said legal representative is not available with the present applicant.

In the case at hand, the estate of deceased respondent No.1 is fully and substantially represented by the other sharers. The issue of abatement in such a situation has been appropriately dealt with by the Apex Court in **1995 Supp (3) SCC 331 titled as Bhurey Khan vs. Yaseen Khan (dead) by LRs and others**. Relevant extract whereof is being reproduced here-in-below:-

“4. We have heard the learned counsel for the parties. After the order dismissing the appeal for non-prosecution was set aside by this Court the parties were relegated to the position as it stood earlier, namely, that the substitution to whom the notices were issued stood dismissed. But that could not furnish application filed by the appellant for bringing on record the legal representatives valid ground for abating the appeal as the six sons of Yaseen were already on record. 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 b Prasad v. Jage Ram. 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.

Similarly in this regard, a reference can also be made to judgment reported as **(2016) 2 SCC 82 titled as State of Andhra Pradesh through Principal Secretary and others vs. Pratap Karan and others alongwith connected matter**.

Relevant extract whereof reads as follow:-

“40. In the instant case, the plaintiffs joined together and filed the suit for rectification of the revenue record by incorporation 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 a 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. We are, therefore, of the view that 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.

In view of the aforesaid stated position, the present application is allowed and the name of respondent No.1 is ordered to be deleted, as estate is sufficiently and substantially represented by respondents No. 2 to 7 who already exit on record. Amended memo of parties filed alongwith the application is ordered to be taken on record.

Application stands disposed of.

CMP No. 23456 of 2025 in CR No. 70 of 2022

No reply is intended to be filed on behalf of the contesting respondents. Respondent No.1 is stated to have died on 17.4.2024. The fact is evident from the death certificate appended alongwith the present application. In the application, it is averred that the legal heirs of deceased are already exit on record as respondents No. 2, 4 to 8. Further it has been averred in para 4 of the application that there is one

legal representative i.e. the daughter of the predeceased son of the deceased respondent No.1 who has now got married, and the address of the said legal representative is not available with the present applicant.

In the case at hand, the estate of deceased respondent No.1 is fully and substantially represented by the other sharers. The issue of abatement in such a situation has been appropriately dealt with by the Apex Court in **1995 Supp (3) SCC 331 titled as Bhurey Khan vs. Yaseen Khan (dead) by LRs and others**. Relevant extract whereof is being reproduced here-in-below:-

“4. We have heard the learned counsel for the parties. After the order dismissing the appeal for non-prosecution was set aside by this Court the parties were relegated to the position as it stood earlier, namely, that the substitution to whom the notices were issued stood dismissed. But that could not furnish application filed by the appellant for bringing on record the legal representatives valid ground for abating the appeal as the six sons of Yaseen were already on record. 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 b Prasad v. Jage Ram. 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.

Similarly in this regard, a reference can also be made to judgment reported as **(2016) 2 SCC 82 titled as State of Andhra Pradesh through Principal Secretary and others vs. Pratap Karan and others alongwith connected matter**.

Relevant extract whereof reads as follow:-

“40. In the instant case, the plaintiffs joined together and filed the suit for rectification of the revenue record by incorporation

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 a 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. We are, therefore, of the view that 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.

In view of the aforesaid stated position, the present application is allowed and the name of respondent No.1 is ordered to be deleted, as estate is sufficiently and substantially represented by respondents No. 2, 4 to 8 who already exist on record. Amended memo of parties filed alongwith the application is ordered to be taken on record.

Application stands disposed of.

(Bipin C. Negi)
Judge

September 24, 2025
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