

**Ganga Devi (deceased) through LRs vs. Bansi Lal
(deceased) through LRs.**

RSA No. 283 of 2009

Reserved on 24.04.2026

05.06.2026 Present: Mr Neeraj Gupta, Senior Advocate, with Mr Harshit Sharma, Advocate, for the appellants.

Mr. Mohinder Verma, Advocate, for respondents No.1(i), 1(ii), 2(a) to 2(c), 3 and 4.

None for respondent No.2(d).

Name of respondent No.5 stands deleted vide order dated 18.05.2015.

CMP(M) No.2016 of 2025

The appellants/applicants have filed the present application for bringing on record the legal representatives of Respondent No. 1(a) Sh. Om Prakash. It has been asserted that the deceased had left the legal representatives mentioned in Para-1 of the application to the best of the applicant's knowledge. The right to sue survives against the legal representatives. Applicants came to Shimla in September 2025 to file an application for substitution. They did not have a copy of the Death Certificate, but only a copy of the Pariwar Register, which reflected the names of the family members of Om Prakash. The applicants were advised to obtain a copy of the death certificate, as it was necessary for filing the application. The Death Certificate obtained by the applicants contained some overwriting, and they were advised to obtain a fresh certificate. The

application could not be filed earlier, and there is a sufficient cause for setting aside the abatement. Hence, it was prayed that this application be allowed and the legal representatives mentioned in Para-1 of the application be brought on record.

The application is opposed by the respondents by filing a reply asserting that the deceased Om Prakash had left two daughters, Kiren Bala and Prem Lata, besides the legal representatives mentioned in the application. The applicants had the knowledge of the death of Om Prakash since 27th June, 2025, but they failed to take necessary steps to bring on record the legal representatives. Both parties hail from the same village, and it cannot be believed that the applicants were not aware of the death. The application has been filed beyond the limitation. Hence, it was prayed that the present application be dismissed.

I have heard Mr Neeraj Gupta, learned Senior Advocate, assisted by Mr Harshit Sharma, learned counsel for the applicant/applicants and Mr Mohinder Verma, learned counsel for respondents No.1(i), 1(ii), 2(a) to 2(c), 3 and 4.

Mr Neeraj Gupta, learned Senior Advocate for the appellants-applicants, submitted that even if the plea taken by the respondents is accepted as correct, that Om Prakash was survived by two more legal heirs, the estate of Om Prakash is sufficiently represented, and it is not necessary to bring all the legal representatives on record. He

relied upon the judgment of the Hon'ble Supreme Court in ***Kishori Lal vs Gopal 2026 INSC 48*** in support of his submission.

Mr Mohinder Verma, learned counsel for the respondents, submitted that the applicants were supposed to bring on record all the legal representatives. The application for bringing on record some of the legal representatives is not proper, and the appeal has abated because of failure to bring all the legal representatives on record. Hence, he prayed that the present application be dismissed.

I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

It was laid down by the Supreme Court in ***Shivshankara versus H.P. Vedavyasa Char, (2023) 13 SCC 1: 2023 SCC OnLine SC 358*** that an application for bringing on record the legal representatives cannot be dismissed on the ground that it does not mention the names of all the legal representatives. It was observed;

“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 the 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 the 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 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 [Bhurey Khan v. Yaseen Khan, 1995 Supp (3) SCC 331]*** 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 [Bhurey Khan v. Yaseen Khan, 1995 Supp (3) SCC 331]***, this Court held thus : (SCC p. 332)

“4. ... The estate of the deceased was thus sufficiently represented. If the appellant had 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 [Mahabir Prasad v. Jage Ram, (1971) 1 SCC 265]***. 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 of the other reasons. 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* [*State of A.P. v. Pratap Karan*, (2016) 2 SCC 82: (2016) 1 SCC (Civ) 595] 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 the 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, the 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.”

59. We are of the considered view that the same analogy is applicable in a case where, even in the event of the 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.

A similar view was taken in ***Kishori Lal*** (supra), wherein it was held that when the estate was sufficiently represented, it would not have the effect of the abatement. Therefore, the submission made on behalf of the respondents that the appeal has abated because the legal representatives have not been brought on record cannot be accepted.

The applicants never claimed that they were not aware of the date of death. They claimed that they did not bring a copy of the certificate with them, and subsequently, there was some overwriting on the Death Certificate, which prevented the application from being filed. These pleas are duly supported by an affidavit, and there is no reason to disbelieve them at this stage. Hence, the applicants have explained the delay in filing the application satisfactorily.

In view of the above, the present application is allowed, and the legal representatives mentioned in para-1 of the application are ordered to be brought on record.

Necessary corrections be made in the memo of parties. The amended memo be filed within two weeks and the matter be listed for hearing in due course.

(Rakesh Kainthla)
Judge

05th June, 2026
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