

RAJASTHAN HIGH COURT

  
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR

S.B. Civil Miscellaneous Application No. 153/2024

Smt. Nirmala Devi W/o Shri Suresh Chand Bunkar, Aged About 48 Years, Resident Of Gram Matateela, Tehsil Talbehat, District Lalitpur, Uttarpradesh.

-----Petitioner

Versus

Rampal Son Of Late Shri Ruparam Bunkar, Resident Of Gram Jaitpura, Tehsil Chomu, District Jaipur (Deceased).

1/1 Maheder Son of Late Shri. Rampal Bunkar, aged 38 years  
1/2 Dilip Verma Son of Late Shri Rampal Bunkar, aged 35 years  
1/3 Deepak Verma Son of Late Shri Rampal Bunkar, Aged 33 years

(All resident of Bunkaro Ka Mohalla, Village Jaitpura, Tehsil Chomu, Distt.jaipur)

1/4 Smt. Rajbala Bunkar Wife of Shri Rajender Kumar D/o Sh. Rampal Bunkar, aged 48 years Resident of 37, Naval Vihar, Sirsi Road, panchayawala, Jaipur.

1/5 Smt. Sheela Devi Wife of Shri Mohanlal Bunkar D/o Sh. Rampal Bunkar, aged 44 years  
Resident of Indra Aawas Colony, Sirsali, Tehsil Aamer, via Chomu, Distt. Jaipur.

-----Respondent

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| For Petitioner(s) | : | Mr. Sumer Saini  |
| For Respondent(s) | : | Mr. Nikhil Saini |

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**HON'BLE MR. JUSTICE ASHOK KUMAR JAIN**

**Order**

**05/05/2026**

1. Instant application is filed under Order 22 Rule 9 read with Section 151 CPC for setting aside of abatement order dated 12.01.2024 in S.B. Civil First Appeal No. 62/2019 titled as Smt. Nirmala Devi versus Rampal.

2. Learned counsel, while placing reliance upon judgment in case of **Om Prakash Gupta alias Lalloowa (now deceased) and others versus Satish Chandra (now deceased) reported as AIR 2025 SC 1201**, submitted that in the instant case an application was filed by the counsel for respondent under Order 22 Rule 10A CPC on 24.08.2023 with prayer to substitute legal heirs of deceased respondent Rampal. He further submitted that when an application is filed by the legal heirs for substitution, then same can be treated as application for substitution and in such case abatement order should be set aside and substitution be permitted. He further submitted that after knowledge about the legal heirs of deceased respondent, the instant application has been filed for substitution and applicant is entitled for setting aside of abatement and also substitution of legal heirs.
3. Aforesaid contentions were opposed by learned counsel appearing on behalf of respondent, but he admitted that an application was filed by their side about information of legal heirs of deceased respondent.
4. Heard learned counsel for the parties and perused the material placed on record.
5. Aggrieved from judgment dated 27.09.2018 in Civil Suit No. 3/2011(377/07) passed by learned Additional District Judge, Chomu, District Jaipur, a S.B. Civil First Appeal No. 62/2019 is preferred by appellant-plaintiff.
6. When this appeal was listed on 12.01.2024, following order was passed by this Court:-

"On death of sole respondent on 18.07.2023, an application under Order 22 Rule 10-A CPC was filed on 24.08.2023 for learned counsel for respondent.

Despite this no efforts were made for substitution of LRs though this matter was listed on 25.08.2023, 11.09.2023 and 30.11.2023.

The appeal stands abated.

Hence, the appeal is dismissed in abatement.

Misc. application, if any, stands disposed of."

7. In absence of filing substitution application of legal representatives of sole respondent Rampal, this Court had dismissed the appeal as abated. An application under Order 22 Rule 10A CPC was filed by Mahendra, who is one of the legal representatives of deceased respondent Rampal, and he has submitted in para No. 3 that under Order 22 Rule 4 CPC the substitution be permitted. The material on record also indicated that Rampal expired on 18.07.2023 and application was filed on 24.08.2023. No application was filed on behalf of appellant to continue the proceedings, therefore, the appeal stood abated after giving opportunity to learned counsel for the appellant.
8. In case of **Om Prakash Gupta (supra)**, Hon'ble Supreme Court has considered Order 22 Rule 10A CPC with Rule 4 of CPC and has held that an application for substitution filed by legal representatives of deceased party can be considered valid even if not filed by the opposite party, and the Court

must adopt a justice-oriented approach in interpreting procedural law to ensure justice.

9. Having considered the aforesaid, it is appropriate to allow the application and give an opportunity to appellant to contest the appeal on merits. In view of discussion made hereinabove, the present miscellaneous application filed under Order 22 Rule 9 CPC read with Section 5 of Limitation Act and Order 22 Rule 4 CPC are hereby allowed and order of abatement is hereby set aside. S.B. Civil First Appeal No. 62/2019 is restored to its original number and legal representatives of deceased Rampal, as proposed in the application, are taken on record and substituted in place of deceased respondent Rampal after condonation of delay.
10. Amended cause title is taken on record.
11. Application No. 153/2024 and Miscellaneous Application No. 2198/2024 stand disposed of.
12. Office is directed to re-register the Civil First Appeal and list the same before appropriate roster.

(ASHOK KUMAR JAIN),J