

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 15995/2022

URN: CW / 32230U / 2022

1. Smt. Bai Devi Wife of Jabar Singh daughter of Teja, Resident Of Village Dhani Bhaloth, Tehsil Khetri, Distt. Jhunjhunu (Rajasthan) lastly resided at Village Mohanbadi, At Present Tehsil Matanhel, at present District Jhajhjar (Haryana) (Appellant No. 2) (Since Deceased) Through Legal Representatives-
- 1/1. Rajesh son of Jabar Singh, aged about 45 Years,
- 1/2. Manju Devi daughter Of Jabar Singh wife of Ajit Singh, aged about 40 Years,
- 1/3. Jabar Singh son of Srichand, aged about 70 Years,
All Resident of Village Dhani Bhaloth, Tehsil Khetri, Distt. Jhunjhunu (Rajasthan) at present resides at Village Mohanbadi, at present Tehsil Matanhel, at present District Jhajhjar (Haryana).
(All are legal representatives of deceased appellant no. 2 Bai Devi who was died on 20-2-2019)
- Legal representatives of Appellant Bai Devi/ Petitioners.

----Petitioners

Versus

1. Santara Devi wife of Late Ramchandra, resident of Dhani Bhaloth, Tehsil Khetri, Distt. Jhunjhunu (Rajasthan).
2. Jeevan son of Mangala, resident of Dhani Bhaloth, Tehsil Khetri, Distt. Jhunjhunu (Rajasthan).
3. Sushila Devi wife of Late Soorat Singh, resident of Dhani Bhaloth, Tehsil Khetri, Distt. Jhunjhunu (Rajasthan).
4. Mukesh daughter of Soorat Singh, aged 8 years, minor through her mother Sushila Devi wife of Late Soorat Singh, resident of Dhani Bhaloth, Tehsil Khetri, Distt. Jhunjhunu (Rajasthan).
5. Kamlesh daughter of Soorat Singh, aged 3 years, minor through her mother Sushila Devi wife of Late Soorat Singh, resident of Dhani Bhaloth, Tehsil Khetri, Distt. Jhunjhunu (Rajasthan).
6. Dhanpati daughter of Mangala, resident of Dhani Bhaloth, Tehsil Khetri, Distt. Jhunjhunu (Rajasthan).

7. Santosh daughter of Mangalaram, resident of Dhani Bhaloth, Tehsil Khetri, Distt. Jhunjhunu (Rajasthan).
8. State of Rajasthan, through Land Holder Tehsildar Buhana, District Jhunjhunu (Rajasthan).
9. Additional Tehsildar, Tehsil Buhana, District Jhunjhunu.
--Defendant/Respondents
10. Smt. Chandrapati wife of Banne Singh daughter of Teja, resident of Village Dhani Bhaloth, Tehsil Khetri, Distt. Jhunjhunu (Rajasthan) at present resides at Village Sanspur, Tehsil Charkhi Dadari, District Bhiwani (Haryana).
11. Bhateri Devi wife of Rajkumar daughter of Teja, resident of Village Dhani Bhaloth, Tehsil Khetri, Distt. Jhunjhunu (Rajasthan) at present resides at Village Mohanbadi, at present Tehsil Matanhel, at present District Jhajhhar (Haryana).

----Plaintiff/Proforma Respondents

For Petitioner(s)	:	Mr. Hemendra Goyal
For Respondent(s)	:	Ms. Supriya Rana for Mr. Raj Kumar Sharma

HON'BLE MR. JUSTICE ANAND SHARMA

Order

10/07/2026

1. This writ petition has been filed by the petitioner challenging the order dated 05.05.2022 passed by Board of Revenue, AJmer whereby, application under Order 22 Rule 3 of CPC dated 15.01.2021 was dismissed and simultaneously, application under Order 22 Rule 9 of CPC filed by the respondents was allowed whereby, the appeal filed by the petitioner qua appellant No.2 Bai Devi has been dismissed, treating the appeal to have been abated to that extent.

2. Learned counsel for the petitioners submits that the litigation before Board of Revenue has arisen out of suit for partition and permanent injunction in which appellant No.2 - Bai Devi was also a party. However, during the pendency of appeal on 20.02.2019, Smt. Bai Devi passed away leaving Rajesh S/o Bai Devi, Manju Davi D/o Bai Devi and Jabar Singh H/o Bai Devi as her legal representatives. In a suit for partition, death of one of the party would not extinguish or affect the legal rights of the respective parties and therefore, right to sue still survives even after the death of appellant No.2. However, on account of bonafide reasons and due to being less educated, fact of death of Bai Devi could not be communicated by the petitioners to their counsel hence, delay occurred in filing application under Order 22 Rule 3 of CPC. The application was duly supported by application for condonation of delay revealing the aforesaid grounds; however, reasons for delay were not rightly appreciated and merely, on account of the fact that in counter to the application filed by the petitioners, one another application under Order 22 Rule 9 was filed by the respondents, the appeal filed by the petitioners has been dismissed qua appellant No.2 on account of having been abated.

3. Learned counsel for the respondents submitted that admittedly, application under Order 22 Rule 3 of CPC read with Section 151 of CPC was filed by the petitioners after lapse of limitation period of 90 days therefore, by operation of law, provisions of Order 22 Rule 9 CPC would come into play and appeal qua the deceased-appellant was rendered abated, as no steps were taken by the petitioners for substitution of the

deceased-appellant within time. Learned counsel for the respondents submits that under these circumstances, where, there was no sufficient reasons disclosed for not filing application before the Court below within time, the Board of Revenue has committed no illegality, infirmity or perversity in passing the impugned order.

4. Heard learned counsel for the parties and perused the material available on record.

5. It is not disputed that the suit in question is between the family members and is related to partition of the disputed property. Under these circumstances, even if, during the pendency of appeal before Board of Revenue, one of the appellant has expired, under the circumstances where his/her legal representatives were alive, death of the deceased appellant cannot prejudice the rights of his/her legal representatives in a proceeding arising out of suit for partition.

6. It has also not been disputed that the petitioner is a less educated person therefore, the possibility of communication gap between the petitioner and his counsel cannot be ruled out. Under these circumstances, where application was filed with delay along with application for condonation of delay, rejection thereof would certainly cause prejudice and miscarriage of justice to the legal representatives of appellant No.2. Under such circumstances and in the interest of justice, this Court finds that the Board of Revenue has utterly failed to exercise its jurisdiction vested in it under Order 22 Rule 3 and application filed by the petitioner has been rejected erroneously, whereas the application filed by the

respondents for abatement has been allowed in ignorance of the justified reasons extended by the writ petitioners.

7. For the reasons mentioned in the application, the writ petition filed by the petitioners is hereby allowed. Order dated 05.05.2022 passed by the Board of Revenue is hereby quashed and set-aside.

8. Legal representatives of respondent No.2 - Bai Devi are directed to be taken on record.

9. The petitioners-appellant before the Board of Revenue shall file amended cause title within a period of 15 days from today.

10. In the light of the fact that the appeal filed by the petitioners - Board of Revenue is pending since 2019, this Court deems it just and proper to direct the Board of Revenue to decide the appeal expeditiously.

11. Pending application(s), if any, shall also stand(s), disposed of.

(ANAND SHARMA),J