



CGHC010015272014



2026:CGHC:44303

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 39 of 2014

Shiv Prasad S/o Hagar Aged About 71 Years R/o Village- Surra, P.S. Balrampur, Tah. Pal, Civil And Revenue Distt. Balrampur-Ramanujganj C.G., Chhattisgarh

... Appellant

versus

1 - Devnarayan And Ors. S/o Hagar Aged About 65 Years R/o Village- Surra, P.S. Balrampur, Tah. Pal, Civil Distt. Surguja And Revenue Distt. Balrampur-Ramanujganj C.G., Chhattisgarh

2 - Mulka S/o Daharu Aged About 68 Years R/o Village- Surra, P.S. Balrampur, Tah. Pal, Civil Distt. Surguja And Revenue Distt. Balrampur-Ramanujganj C.G., District : Balrampur, Chhattisgarh

3 - State Of Chhattisgarh S/o Thru- Collector, Balrampur-Ramanujganj, P.S. And Tah. Balrampur-Ramanujganj, Civil Distt. Surguja, Revenue Distt. Balrampur-Ramanujganj C.G., District : Balrampur, Chhattisgarh

4 - Rampur S/o Hagar Aged About 71 Years R/o Village- Surra, P.S. Balrampur, Tah. Pal, Civil Distt. Surguja And Revenue Distt. Balrampur-Ramanujganj C.G. Now Died, District : Balrampur, Chhattisgarh

5 - Dasu S/o Dahru Aged About 80 Years R/o Village- Surra, P.S. Balrampur, Tah. Pal, Civil Distt. Surguja And Revenue Distt. Balrampur-Ramanujganj C.G. Now Died, District : Balrampur, Chhattisgarh

... Respondent(s)

For Appellant	:	Mr. Sandeep Patel, Advocate
For Respondent(s)	:	Mr. Shrikant Kaushik on behalf of Mr. Rishikant Mahobia, Advocate
For Respondent NO. 3	:	Mr. Deepak Singh, PL

(Hon'ble Shri Justice Sachin Singh Rajput)

Judgment on Board

13.10.2026

1. The present appeal has been preferred under Order 43 Rule 1(k) of the Code of Civil Procedure, 1908 (for short, “*the CPC*”) assailing the legality and correctness of the order dated 22.11.2013 passed by the Additional District Judge, Balrampur, District Balrampur-Ramanujganj, place Ramanujganj, Chhattisgarh (for short, “*the learned first appellate Court*”) whereby Civil Appeal No. 11-A/12 preferred by the appellant/plaintiff has been dismissed as abated.

2. Learned counsel for the appellant/plaintiff submits that the appellant instituted a suit seeking declaration of title, possession and permanent injunction against the defendants namely Devnarayan, Mulka, Rampur, Dasu and the State of Chhattisgarh. The said suit was dismissed by the Civil Judge, Class-I, Ramanujganj, District Surguja vide judgment and decree dated 05.12.2008 passed in Civil Suit No. 2-A/2008. Aggrieved thereby, the appellant preferred a first appeal registered as Civil Appeal No. 11-A/12 before the learned first appellate Court. He further submits that during the pendency of the appeal, respondent Nos. 4 and 5 namely Rampur and Dasu died, whereupon the appellant filed an application under Order 22 Rule 4 of the CPC for bringing their legal representatives on record. The learned first appellate Court rejected the application on the ground that respondent No. 5/Dasu had died in the year 2010 and in the absence of applications for setting aside the abatement and condonation of delay, the appeal had abated against the deceased respondents. Consequently, the appeal itself was dismissed as abated. He submits that the learned first appellate Court ought to have afforded an opportunity to the appellant to file appropriate applications under Order 22 Rule 9 of the CPC and Section 5 of the Limitation Act, 1963 instead of dismissing the appeal without granting such opportunity. Reliance has been placed upon the judgment of the Hon’ble Supreme Court in ***Om Prakash***

Gupta @ Lalloowa (Now Deceased) and Others v. Satish Chandra (Now Deceased) reported in **2025 SCC OnLine SC 291**.

3. Per contra, learned counsel appearing for the respondents opposes the appeal and supports the impugned order passed by the learned first appellate Court.

4. I have heard learned counsel for the parties and perused the material available on record.

5. Perusal of the record reveals that the learned first appellate Court dismissed the appeal as abated on account of the death of respondent Nos. 4 and 5 primarily on the ground that no application for setting aside the abatement and condonation of delay had been filed. However, the application for substitution of the legal representatives had already been filed by the appellant/plaintiff. In this regard, the law laid down by the Hon'ble Supreme Court in *Om Prakash Gupta (Supra)* in paragraph Nos. 22 & 23 observes thus:

“22. There is another equally important aspect, which merits our attention. The second appeal was restored by the High Court vide order dated 25th May, 2018. This order, restoring the second appeal, was recalled vide order dated 11th January 2019. The reason given was that, in the absence of an application praying for setting aside the abatement, the second appeal could not have been ordered to be restored.

23. We find it difficult to agree with such reasoning. When an application praying for substitution had been made, then, even assuming that it does not have an explicit prayer for setting aside the abatement, such prayer could be read as inherent in the prayer for substitution in the interest of justice. We draw inspiration for such a conclusion, having read the decision in [Mithailal Dalsangar Singh v. Annabai Devram Kini](#) reported in (2003) 10 SCC 691. This Court reiterated the need for a justice-oriented approach in such matters. Inter alia, it was held that prayer to bring on record heir(s)/legal representative(s) can also be construed as a prayer for setting aside the abatement. The relevant passage reads as under:

“8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called (2003) 10 SCC 691 for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.

9. The courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of ‘sufficient cause’ within the meaning of sub-rule (2) of Rule 9 of Order 22 and of [Section 5](#) of the Limitation Act, 1963 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction.

10. In the present case, ... such an approach adopted by the Division Bench verges on too fine a technicality and results in injustice being done. There was no order in writing passed by the court dismissing the entire suit as having abated. The suit has been treated by the Division Bench to have abated in its entirety by operation of law. For a period of ninety days from the date of death of any party the suit remains in a state of suspended animation. And then it abates. The converse would also logically follow. Once the prayer made by the legal representatives of the deceased plaintiff for setting aside the abatement as regards the deceased plaintiff was allowed, and the legal representatives of the deceased plaintiff came on record, the constitution of the suit

was rendered good; it revived and the abatement of the suit would be deemed to have been set aside in its entirety even though there was no specific prayer made and no specific order of the court passed in that behalf.”

(emphasis supplied)

6. In view of the aforesaid legal position, this Court is of the considered opinion that the learned first appellate Court is now required to consider the application for substitution in the light of the principles laid down by the Hon’ble Supreme Court in *Om Prakash Gupta (supra)* rather than dismissing the appeal as abated without examining the matter from that perspective. Accordingly, the impugned order dated 22.11.2013 is set aside. Civil Appeal No. 11-A/12 is restored to its original number and the matter is remitted to the learned first appellate Court to consider the application for substitution in accordance with law including the question of setting aside the abatement and condonation of delay after affording due opportunity of hearing to the parties. Liberty is also reserved in favour of the appellant to move appropriate applications for setting aside abatement and condonation of delay. The parties are directed to appear before the learned first appellate Court on **16.12.2026**. A copy of this order shall be communicated to the learned first appellate Court forthwith.

7. Accordingly, the appeal is **allowed**. No order as to costs.

Sd/-

(Sachin Singh Rajput)

JUDGE

H. Ansari

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by
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