

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 101 of 2008

Reserved on: 21.09.2026

Date of Decision: 09.10.2026

Dhiania (since deceased)
through his LRs & others

...Appellants

Versus

Kanso Devi & others

...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes

For the appellants : Ms Devyani Sharma, Senior Advocate, with Mr Shivom Sharma, Advocate.

For the respondents : Mr Ajay Sharma, Senior Advocate, with Mr Athrav Sharma, Advocate.

Rakesh Kainthla, Judge

The plaintiffs, Babu Ram and Dhiana, filed a civil suit against Diwan seeking a declaration that they are the owners in possession of the suit land mentioned in the head note of the plaint, the defendant had no right, title or interest in the suit land, and the mutation number 897, attested on 31.05.1986, conferring proprietary rights upon the defendant and

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

subsequent entries in favour of the defendant are illegal, null and void.

2. Learned trial Court dismissed the suit after holding that the claim was time-barred. Dhiana, plaintiff no. 2, preferred an appeal, which was dismissed. Being aggrieved by the judgments and decrees passed by the learned Courts below, Dhiana has approached this Court through his legal representatives.

3. The original defendant, Diwan, expired during the pendency of the appeal before the learned appellate Court and his legal representatives were brought on record. They were as respondents 1 to 5 before this Court. Nirmal Kaur, respondent no. 3 died during the pendency of the appeal before this Court. Her legal representatives were not brought on record, and the statutory period for bringing on record the legal representative has expired. Hence, the parties were heard on the question whether the appeal had abated in whole or in part.

4. I have heard Ms Devyani Sharma, learned Senior Advocate, assisted by Mr Shivom Sharma, learned counsel for the appellants and Mr Ajay Sharma, learned Senior Advocate,

assisted by Mr Atharav Sharma, learned counsel for the respondents.

5. Ms Divyani Sharma, learned Senior Advocate, for the appellants, submitted that the legal representatives of Diwana are the co-owners of the suit land. A suit instituted against a co-owner does not abate on the death of the co-owner as another co-owner is competent to represent the estate. The other legal representatives of the original defendants, Diwan, were already on record and the appeal would not abate in its entirety, but partly. Therefore, she prayed that the matter be listed for final hearing. She relied upon the following judgments in support of her submissions:

1. *Venigalla Koteshwaramma vs. Malampati Suryamba and others* (2021) 4 SCC 246;
2. *Delhi Development Authority vs. Diwan Chand along with connected matter* (2022) 10 SCC 428;
3. *State of Punjab vs. Nath Ram* AIR 162 SC 89
4. *Sakharam since deceased through LRs & Anr. vs. Kishanrao* SLP(C) No. 13573-74 of 2022 decided on 03.08.2022
5. *Parkash vs. Dhanu (dead) through LRs, Latest HLJ 2010 (HP) 1072; and*

6. ***Ram Lal & others vs. Jethu Ram & others***
2021(2) Shim. LC 703

6. Mr Ajay Sharma, learned Senior Advocate, for the respondents, submitted that the effect of not bringing on record the legal representative of the deceased Nirmal Kaur is that the order of conferment of proprietary rights has become final qua them. It is impermissible to set aside the order of conferment of proprietary rights against the rest of the respondents. The appeal cannot continue as its continuation may result in passing of conflicting decrees. Therefore, he prayed that the present appeal be dismissed.

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

8. It was laid down by the Hon'ble Supreme Court in ***Pandit Sri Chand And Ors vs M/S. Jagdish Parshad Kishan Chand*** 1966 SC 1427, that the test to be applied whether the suit/appeal has abated in whole or in part is whether the success of suit/appeal may lead the Court to a decision which will conflict with the decision between the appellant and the deceased respondent, leading to the passing of mutually contradictory

decrees, whether the appellant/plaintiff could not have brought the action for necessary relief against those respondents/defendants alone who are still before the Court or whether the decree against the surviving respondents would be ineffective and could not be successfully executed. It was observed:

7. This Court has on more occasions than one considered whether, in circumstances similar to these, an appeal should stand abated in its entirety. In the *State of Punjab v. Nathu Ram* [(1962) 2 SCR 636], this Court explained the tests applicable in considering whether an appeal abates in its entirety when it has abated qua one of the respondents. The headnote of the case reads:

“If the Court can deal with the matter in controversy so far as regards the rights and interest of the appellant and the respondents other than the deceased respondent, it has to proceed with the appeal and decide it; otherwise, it will have to refuse to proceed further with the appeal and therefore dismiss it. Ordinarily, the consideration which will weigh with the court deciding upon the question whether the entire appeal had abated or not will be whether the appeal between the appellants and the respondents other than the deceased respondent can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the court-and the tests to determine this have been described thus : (a) when the success of the appeal may lead to the court's coming to a decision which will be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the court's passing a decree which will be

contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the court and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective that is to say it could not be successfully executed.” (emphasis supplied)

9. It was held in *Hemareddi v. Ramachandra Yallappa Hosmani*, (2019) 6 SCC 756, that the Court can refuse to proceed with the appeal when the continuation of the appeal would result in passing of the conflicting decrees. It was observed:-

29. In this case, undoubtedly as we have noted, the appellant and his late brother sued as plaintiffs for a declaration that the first defendant was not the adopted son and he has no rights. They also sought a prohibitory injunction. The suit stood dismissed by the trial court. Let us take the converse position. Assuming that the suit was decreed by the trial court and an appeal was carried by the defendants, and pending the appeal by the defendants, if the late brother of the appellant had died and if the defendants had not impleaded the legal representatives of the late brother and the appeal abated as against him, would it then not be open to the appellant as the respondent in the appeal to contend that if the appeal was to be allowed to proceed in the absence of the legal representatives of his late brother and succeed, there would be an inconsistent decree. On the one hand, there will be a decree by the trial court declaring that the first defendant was not the adopted son and had no interest in the property qua the late brother of the appellant. On the other hand, the appellate court could be invited to pass a decree which should be to the effect that the first

defendant was found to be the adopted son and had right and interest over the property, and a declaration to that effect would have to be granted. Would not the appellate court then have to hold that, though the decree in favour of the deceased brother of the appellant has become final, and under it, a declaration is granted that Defendant 1 is not the adopted son and he has no right to claim the property, and there is an injunction against him that he is the adopted son, opposed to the decree which has been passed by the trial court which has attained finality. We would think that the appellate court would indeed have to refuse to proceed with the appeal on the basis that allowing the appeal by the defendants would lead to an appellate decree which is inconsistent with the decree which has become final as against the deceased brother of the appellant.

30. We would think that the situation cannot be any different, when we contemplate the converse of the aforesaid scenario which happens to be the factual matrix obtaining in this case. The right which was set up by the appellant along with his late brother was joint. They were members of the joint Hindu family consisting of their late father, late Govindareddi, their father Shriram Reddy and Basavareddi, who was none other than the husband of the second defendant. This is not a case where their claims were distinct. This is not the situation which was present in the case dealt with by the Constitution Bench under the land acquisition case. Therein, several persons came together and sought relief in one proceeding. We would think that this is not the position in this case.

31. It may be true that if a separate suit had been filed by the late brother and it had abated on his death, there would be no decree on merits and the suit would have abated. No doubt, it could be argued that even though the appellant and his late brother set up the case of joint right, it would only mean that they are co-owners of the property, and therefore, they had independent rights as

co-owners which could be canvassed in two different proceedings, and therefore, the decree of the trial court dismissing the suit be treated as two different decrees — one decree against the appellant and the other against his late brother. Even then, the decree, which the High Court would be invited to pass, would be contradictory and inconsistent with the decree as against the late brother of the appellant, which may not be permissible in law.

32. The decree, which the appellant, if successful in the appeal, would obtain, would be absolutely contrary to the decree which has also attained finality between his late brother and the defendants. They are mutually irreconcilable, totally inconsistent. Laying one side by side, the only impression would be that one is in the teeth of the other. In one, the suit is dismissed whereas in the other, the suit would have been decreed.

10. It was held by the Hon'ble Supreme Court in *Goli Vijayalaxshmi & Ors. v. Yendru Sathiraju (dead) by LRs* 2019(11) SCC 352 that the suit/appeal shall abate as against the deceased defendant where no application is made to bring on record the legal representatives of the deceased defendant within time. Where the decree is joint and indivisible and pursuing the appeal will result in mutually inconsistent contradictory decrees, the appeal will abate in its entirety. It was observed:

“15. In this factual background, it will be apposite to first take note of the principles laid down in respect of abatement of appeals. Order 22 Rule 4(3) CPC specifies that a suit/appeal shall abate as against the deceased defendant where no application is made to bring on record the legal representatives of the deceased defendant

within the time stipulated. Further, Order 22 Rule 9 CPC specifies the effect of abatement since it is clarified that no fresh suit is maintainable in respect of the same cause of action.

16. The primary role of the Court is to adjudicate the dispute between the parties and to advance substantial justice. Since the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed within the strict parameters of the law. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is by operation of law, but 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.

17. The question arises in reference to the effect of abatement qua the appellants (plaintiffs or defendants), as the case may be, where the decree is joint and indivisible, the appeal against the other defendants will be proceeded with and in the event of an appeal to succeed, there will be two mutually inconsistent/contradictory decrees and more particularly when the suit has already been decreed qua one defendant and the suit would stand dismissed qua the other defendants, in such a given situation, tests have been laid down by this Court to determine as to whether or not to proceed with the appeal.

18. This Court, while adverting to Order 22 Rule 4 CPC against the other respondent in *State of Punjab vs. Nathu Ram AIR 1962 SC 89*, observed as under: -

"6. The question whether a Court can deal with such matters or not will depend on the facts of each case, and therefore no exhaustive statement can be made about the circumstances when this is possible

or is not possible. It may, however, be stated that ordinarily, the considerations which weigh with the Court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the Court. The test to determine this has been described in diverse forms. Courts will not proceed with an appeal (a) when the success of the appeal may lead to the Court's coming to a decision which conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the Court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the Court and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective, that is to say, it could not be successfully executed."

19. The exposition of the Constitution Bench in *Sardar Amarjit Singh Kalra (Dead) by LRs and others (supra)* is as under: -

"34. In the light of the above discussion, we hold: -

(1) Wherever the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for the purpose of convenience or otherwise, joined together in single litigation to vindicate their rights the decree passed by the Court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The same would

be the position in the case of defendants or respondents having similar rights contesting the claims against them.

(2) Whenever different and distinct claims of more than one are sought to be vindicated in one single proceeding as the one now before us, under the Land Acquisition Act or in similar nature of proceedings and/or claims in the assertion of individual rights of parties are clubbed, consolidated and dealt with together by the Courts concerned and a single judgment or decree has been passed, it should be treated as a mere combination of several decrees in favour of or against one or more of the parties and not as joint and inseparable decrees.

(3) The mere fact that the claims or rights asserted or sought to be vindicated by more than one are similar or identical in nature or by joining together more than one of such claimants of a particular nature, by itself would not be sufficient in law to treat them as joint claims, so as to render the judgment or decree passed thereon a joint and inseverable one.

(4) The question as to whether in a given case the decree is joint and inseverable or joint and severable or separable has to be decided, for the purposes of abatement or dismissal of the entire appeal as not being properly and duly constituted or rendered incompetent for being further proceeded with, requires to be determined only with reference to the fact as to whether the judgment/decrees passed in the proceedings vis-a-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that reason, a decree can be said to be contradictory or

inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other."

20. It was further considered in *Budh Ram and Others Vs. Bansi and Others 2010(11) SCC 476* and the principle, therefore, that emerges is to test whether the judgment/decreed passed in the proceedings vis-à-vis the remaining parties would suffer from the vice of contradictory or inconsistent decrees inasmuch as the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other.

21. Applying the aforesaid principles, the facts of the instant cases on hand clearly manifest that the judgment and decree passed by the trial Court became final qua appellant no. 2 (defendant no. 2) upon abatement of the appeal qua him vide order dated 24th July 2009. If this Court would permit the remaining appellants to prosecute the appeals and, in the event they were to succeed, indisputably, there would be mutually inconsistent/contradictory decrees inasmuch as the suit has already been decreed qua appellant no. 2 (defendant no. 2) on the one hand and the suit would stand dismissed qua appellant nos. 1 & 3 (defendant nos. 1 & 3) or decreed against them in reference to schedule 'C' property and not against appellant no. 2 (defendant no. 2) due to dint of cross-appeal filed by the plaintiff.

22. If the instant appeals were to be allowed, the same would result in a situation where the enforcement of the two decrees would be inexecutable, and the enforcement of one would negate or render impossible the enforcement of the other; and, to further simplify, the plaintiffs/respondents would be entitled to the share of the appellant no. 2 (defendant no. 2) in the suit schedule

'A' and 'B' properties and there is no way he could enforce the same without negating the enforcement of the other decree viz. dismissal of the suit qua appellant nos. 1 & 3(defendant nos. 1 & 3) since the suit schedule properties each constitute a single unit and the same has not yet been demarcated and/or divided amongst the defendants and without such clear demarcation and delineation of the properties, indisputably, which has not yet happened, it would be impossible for the plaintiffs/respondents to enforce decree qua the appellant no. 2(defendant no. 2) without impinging on the rights of the appellant nos. 1 & 3(defendant nos. 1 & 3).

11. It was held in *DDA v. Diwan Chand Anand*, (2022) 10 SCC 428 that the appeal cannot continue where the right to sue does not survive to the surviving respondents alone. It was observed: -

30. After referring to the decision of this Court in *Nathu Ram [State of Punjab v. Nathu Ram, AIR 1962 SC 89]*, in *Venigalla Koteswaramma v. Malampati Suryamba [Venigalla Koteswaramma v. Malampati Suryamba, (2021) 4 SCC 246: (2021) 3 SCC (Civ) 238]*. See also *Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272]*, it is observed by this Court in *Venigalla Koteswaramma case [Venigalla Koteswaramma v. Malampati Suryamba, (2021) 4 SCC 246 : (2021) 3 SCC (Civ) 238]* that the nature and extent of the abatement in a given case and the decision to be taken thereon will depend upon the facts of each case and, therefore, no exhaustive statement can be made either way and that the decision will ultimately depend upon the fact whether the decree obtained was a joint decree or a separate one. It is further observed that this question cannot and should not also be tested merely on the format of the decree under challenge or it being one or the

manner in which it was dealt with before or by the Court which passed it.

31. Thus, as observed and held by the Court in *Venigalla Koteswaramma case [Venigalla Koteswaramma v. Malampati Suryamba, (2021) 4 SCC 246 : (2021) 3 SCC (Civ) 238]* :

31.1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

31.2. If there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants (Order 22 Rule 2).

31.3. Where one of two or more defendants dies, and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. Where within the time limited by law no application is made under sub-rule (1) of Order 22 Rule 4, the suit shall abate as against the deceased defendant.

31.4. The provision of Order 22 shall also apply to the appeal proceedings.

32. As observed and held by this Court in the aforesaid decisions while considering whether the suit/appeal has abated due to non-bringing the legal representatives of plaintiffs/defendants or not, the Court has to examine if the right to sue survives against the surviving respondents. Thereafter, the appellate court has to consider the question of whether, by not bringing the legal representatives of some of the defendants, the appeal could have proceeded against the surviving respondents. Therefore, the appellate court has to consider the effect of abatement of the appeal against each of the respondents in case of multiple respondents.

12. In the present case, the death of respondent no. 3, Nirmal Kaur, means that the decree dismissing the suit against Diwana, her predecessor, has become final, meaning that the proprietary rights were rightly conferred in his favour. If the appeal is continued and is allowed, it would mean that the proprietary rights were wrongly conferred in favour of Diwana, predecessors of respondents no. 1, 2, 4 and 5. The proprietary rights could not have been validly conferred and wrongly conferred simultaneously, and the conflicting decrees would arise in the present matter. Further, the appellants could not have filed a civil suit against respondents 1, 2, 4 and 5, seeking a declaration that the proprietary rights conferred in favour of Diwana were bad without impleading Nirmal Kaur because again an anomalous situation arise where the conferment of

proprietary rights in favour of Diwana were valid as well as invalid. Thus applying the tests laid down by Hon'ble Supreme Court in *Sri Chand* (supra), the right to sue will not survive against the surviving legal heirs alone and the appeal would abate in its entirety and not in part.

13. In *Sukharam* (supra), the Hon'ble Supreme Court was not concerned with the passing of conflicting decrees and the cited judgment does not apply to the present case. In *Parkash* (supra), the question before this Court was whether the learned appellate Court had rightly substituted the legal representatives after the remand of the matter to the Court, which is not the case here. In *Ram Lal* (supra), the question before this Court was whether the person who had not filed the written statement could be exempted during the appeal or not, which is not the question here. Therefore, the cited judgments do not apply to the present case.

15. Hence, the submission made on behalf of the appellants that the appeal has abated in part is rejected, and it is held that the appeal has abated in whole.

16. In view of the above, the appeal is dismissed as having abated.

17. A copy of the judgment, along with the records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

09th October, 2026
(ravinder)