

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.972 of 2017

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Bhoj Manjhi son of Late Saral Manjhi, resident of Village Mohanpur, P.S. Barauli, District Gopalganj.

... .. Appellant/s

Versus

- 1.1. Munni Devi Wife of Late Jaglal Manjhi, Resident of Village Mohanpur, P.S. Barauli, District Gopalganj.
- 1.2. Sanjay Kumar Manjhi, son of Late Jaglal Manjhi, Resident of Village Mohanpur, P.S. Barauli, District Gopalganj.
- 1.3. Vibha Kumari, Wife of Amlesh Paswan, Resident of Village Ejara, P.S. Govindganj, District East Champaran.
- 1.4. Usha Kumari, Wife of Pappu Paswan, Resident of Village-Udaypura, P.O. Bharpurwa, P.S. Vijaipur, District Gopalganj.
2. Sri Ram Manjhi son of Puran Manjhi, resident of Village Pokhar Vinda, P.O.-Sasamusa, P.S. Kuchaikote, District Gopalganj.
3. Razali Devi, Wife of Bindeshwari Manjhi, D/o Late Puran Manjhi, resident of Village Pokhar Vinda, P.O.-Sasamusa, P.S. Kuchaikote, District Gopalganj.
4. Sunil Kumar, son of Ram Chandra Manjhi, resident of Village Pokhar Vinda, P.O.-Sasamusa, P.S. Kuchaikote, District Gopalganj.
5. Anil Kumar, son of Ram Chandra Manjhi, resident of Village Pokhar Vinda, P.O.-Sasamusa, P.S. Kuchaikote, District Gopalganj.
6. Ram Chandra Manjhi, son of Abhilash Manjhi, resident of Village Pokhar Vinda, P.O.-Sasamusa, P.S. Kuchaikote, District Gopalganj.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Naresh Prasad, Advocate
For the Respondent/s	:	Mr. Setu Prateek, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 20-08-2025

Heard learned counsels for the parties.

2. The instant appeal has been preferred against the order dated 31.08.2017 passed by learned Additional District Judge-V, Gopalganj in Title Appeal No.32 of 2005, wherein and whereby



the said title appeal has been ordered as abated on the ground that respondent no.5 was died on 23.02.2013 and the substitution petition was filed on 31.07.2017 with much delay and no appropriate reason was shown on record for setting aside the abatement.

3. The facts in brief are that appellant filed Title Suit No.207 of 1991 in the Court of learned Munsif, Gopalganj for declaration of his title and confirmation of his possession over the disputed land which was dismissed vide judgment and decree dated 28.01.2005 against which the appellant preferred Title Appeal No.32 of 2005 in the Court of learned District Judge, Gopalganj which was later on transferred in the Court of learned Addl. District Judge-V, Gopalganj. During the pendency of appeal, respondent no.5, namely, Gangazali Devi (daughter of deceased Puran Manjhi/respondent no.2) died on 23.02.2013 leaving behind two sons and her husband. The appellant filed a petition alongwith affidavit under Order 22 Rule 4 C.P.C. on 31.07.2017 for expunging the name of respondent no.5 and for substituting her heirs and legal representatives. The appellant also filed a limitation petition for setting aside the abatement on the ground that the appellant had no knowledge regarding the death of respondent no.5 whose marriage was solemnized in a



village Bedupur, P.S.-Taraiya Sujan, District-Gopalganj which is far away about 150 K.M. from the village of the appellant. It is further stated that the son of respondent no.5, namely, Sunil Kumar filed an affidavit regarding the death of his mother disclosing heirs and legal representatives then he got information regarding her death. After hearing the parties, learned appellate court below held that the said petitions have been filed after too much belated stage of expiry of stipulated period which is not permissible and the instant appeal is liable to be abated and accordingly, vide impugned order dated 31.08.2017 held that the appeal is abated.

4. Learned counsel for the appellant submitted that the impugned order has been arbitrarily passed without considering the reasons given in the petition that appellant had no knowledge regarding the death of respondent no.5 in view of the fact that appellant is resident of Gopalganj District and respondent no.5 was resident of Kushi Nagar District in Uttar Pradesh which is 150 K.M. far away from the village of the appellant. The appellant had filed a substitution petition under Order 22 Rule 4 of C.P.C. on 16.07.2016 regarding the death of respondent no.2, namely, Puran Manjhi who died on 26.04.2016 which was heard by the Court and allowed the same on



17.01.2017. This shows that earlier the appellant had no knowledge about the death of respondent no.5 and when he came to know about the same on filing affidavit by her son, the appellant filed the required petition in accordance with law with proper explanation of delay in filing the same within stipulated period. Learned counsel for the appellant further submitted that the impugned order is bad in law and facts and is liable to be set aside.

5. On the other hand, learned counsel for the respondents submitted that the appeal had been abated and sufficient cause has not been shown for setting aside the abatement. The abatement is automatic and not even a specific order is required to be passed by the Court in that behalf. A right accrues in favour of the respondents in appeal and it will be unfair and unjust to take away their vested right on such grounds stated by the appellant and the appellate court below has rightly passed the impugned order which requires no interference by this Court.

6. Law casts a duty upon the plaintiff or the appellant, as the case may be, to bring the legal representatives of the deceased on record lest a decree should be obtained against a dead person which is of no legal effect. A suit or appeal abates



automatically after the expiration of 90 days of the death of the deceased defendant or respondent. Abatement results in interruption of the suit, suspending its progress until new parties are brought before the Court, and if it is not done within the proper time, or the Court does not exercise its discretion in extending the time, the suit comes to an end for good.

7. Rule 1 of Order 22 C.P.C. mandates that the death of defendant or a plaintiff shall not cause the suit to abate if the right to sue survive. In other words, in the event of death of a party, where the right to sue does not survive, the suit shall abate and come to an end. In the event, the right to sue survives, the concerned party is expected to take steps in accordance with provisions of this Order. When the proceedings have been abated, the suit essentially has to come to an end, except when the abatement is set aside and the legal representatives are ordered to be brought on record by the Court in terms of Order 22 Rule 9. Order 22 Rule 9(3) of C.P.C. contemplates that Section 5 of the Indian Limitation Act, 1963 shall apply to an application filed under sub-rule 2 of Rule 9 of Order 22. In other words, an application for setting aside the abatement has to be treated at par and the principles enunciated for condonation of delay under Section 5 of Limitation Act are to apply *pari*



materia.

8. The provision of Order 22 Rule 9 C.P.C. has been the subject matter for considerable time now. Sometimes the Courts have taken a view that delay should be condoned with a liberal attitude, while on certain occasion the Courts have taken a stricter view and whenever the explanation was not satisfactory, have dismissed the application for condonation of delay. Thus, it is difficult to state any straight-jacket formula which can be applied to all cases without reference to the peculiar facts and circumstances of a given case. The expression ‘sufficient cause’ implies the presence of legal and adequate reasons. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one.

9. Order XXII Rule 10A of the C.P.C. inserted vide Amendment Act of 1976, imposes an obligation on the pleader of a party to communicate to the death of the party represented by him. Rule 10A reads as under:

“Duty of a Pleader to communicate to Court death of a party : whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.”



10. Although appointment of a pleader comes to an end with the death of his client, the aforesaid provision imposes a further obligation on him with a view to reduce some extent the complications that arise by reason of the plaintiff's ignorance of the death of a defendant. The counsel of the deceased had failed to discharge the obligation imposed on him under the said Rule 10A.

11. Neither the counsel for the deceased respondent nor legal representatives of the deceased respondent had reported about the death of the respondent to the Court and the Court has not given notice of such death to the appellant. The appellant avers that he was unaware of the death of the respondent and there is material to doubt or contradict his claim.

12. The Court should not punish the appellant for his ignorance of death of respondent no.5, by refusing to set aside the abatement. Lack of diligence or negligence can be attributed to an appellant only when he is aware of the death and fails to take steps to bring legal representatives on record. Where the appellant being unaware of the death of respondent no.5, does not take steps to bring the legal representatives on record, there can be no question of any want of diligence or negligence.

13. The appellant was neither negligent nor there is any



inaction or default on his part. The Court ought to have exercised to advance substantial justice, when the delay was not on account of any dilatory tactics , want of *bona fides*, deliberate inaction or negligence on the part of the appellant. The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation. The appellant is not expected to keep checking whether the contesting respondent is alive or not.

14. On analysis of the above principles, now reverting to the merits of the instant appeal, it is clear that the appellate court below failed to consider the facts that the appellant had no knowledge about the death of respondent no.5 and filed the required application alongwith application under Order 22 Rule 9 C.P.C. and shown sufficient reason for condonation of delay.

15. In the opinion of this Court, ignorance of plaintiff/appellant regarding the death of respondent no.5 is a sufficient cause for condoning the delay in filing the application under XXII Rule 9 of C.P.C. The appellant's conduct would not be held to be blame-worthy or negligent. The delay was ought to have been condoned. Accordingly, this appeal is allowed. The delay is condoned. Abatement is set aside. The legal representatives of deceased respondent no.5 in Title Appeal



before the appellate court below be amended. The appellate court below is directed to proceed further with the hearing of the appeal in accordance with law. Parties to bear their respective costs.

16. Let the L.C.R. be returned back forthwith to the court concerned.

(Sunil Dutta Mishra, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	07.08.2025
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