

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1166 of 2023

1. Chandan Paswan Son of Late English Paswan, resident of Mohalla - Salimpur Ahra, Gali No. 1, P.S. Gandhi Maidan, District - Patna.
2. Sunil Paswan, Son of Late English Paswan, resident of Mohalla - Salimpur Ahra, Gali No. 1, P.S. Gandhi Maidan, District - Patna.

... .. Petitioner/s

Versus

1. Shakuntala Devi wife of Siya Sharan Singh, Resident of Machhariawan, P.S. - Fatuha, District - Patna, presently residing at C/o - Faujdari Mahto, Jagjiwan Gali, Jagat Narayan Road, P.S. - Kadamkuan, District- Patna.
2. Anup Chai Son of Late Bujhawan Chai, Resident of Mohalla - Salimpur Ahra, Gali No. 1, P.S. Gandhi Maidan, District- Patna.
3. Faggu Chai, Son of Late Bujhawan Chai, Resident of Mohalla - Salimpur Ahra, Gali No. 1, P.S. Gandhi Maidan, District- Patna.
4. Dilip Paswan, Son of Vilash Paswan, Resident of Mohalla - Salimpur Ahra, Gali No. 1, P.S. Gandhi Maidan, District- Patna.
5. Manoj Paswan, Son of Vilash Paswan, Resident of Mohalla - Salimpur Ahra, Gali No. 1, P.S. Gandhi Maidan, District- Patna.
6. Ramsher Paswan, Son of Vilash Paswan, Resident of Mohalla - Salimpur Ahra, Gali No. 1, P.S. Gandhi Maidan, District- Patna.
7. Sheela Devi, Wife of Jogendra Sao, resident of Village - Machhariawan, P.S. - Fatuha, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Kumar Satya Kirti, Advocate
For the Respondent/s : Mr.Kaushal Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 10-04-2025

Heard learned counsel for the petitioners and learned counsel for the respondent no. 1.

2. The petitioners are aggrieved by the order dated 04.05.2023 passed by learned Sub Judge-IV, Patna in Title Suit No. 5387 of 2014 whereby and whereunder the petition filed by



the plaintiff/ respondent no. 1 under Order 22 Rule 4 of the Code of Civil Procedure (in short “the Code”) for substitution of defendant no. 4 and 5 by their heirs/legal representatives has been allowed.

3. Learned counsel for the petitioners submits that the petition was filed by the plaintiff under Order 22 Rule 4 of the Code for substitution of deceased defendant no. 4 and 5 but no application for setting aside the abatement has been filed and no orders have been passed for setting aside such an abatement which set in after passage of 90 days from the dates of death of the deceased defendant no. 4 and 5. Learned counsel referred to the Order 22 Rule 4 clause 3 of the Code which prescribes where within the time limited by law no application is made under said Sub Rule 1 of Rule 4 of Order 22 of the Code the suit shall abate as against the deceased defendant. Thus, learned counsel submits that the impugned order is illegal and could not be sustained.

4. Learned counsel appearing on behalf of respondent no. 1 submits that the respondent is a lady coming from a village and she is not aware about the legal process. She had no relationship with the deceased defendants and she had no knowledge about their deaths prior to moving of the application.



As soon as the plaintiff/respondent no. 1 came to know about the deaths of the defendant nos. 4 and 5, she filed the application for substitution of the deceased defendants along with an application for condonation of delay in filing the substitution petition. Learned counsel further submits that the time of 90 days had not expired from the date of knowledge of the plaintiff/petitioner. Learned counsel further submits that the deaths occurred during the COVID-19 pandemic and the Hon'ble Supreme Court in ***Suo Motu Writ Petition (CIVIL) No(S).3/2020*** has extended the limitation period from 15.03.2020 till 28.02.2022. Learned counsel further submits that in the light of the order of the Hon'ble Supreme Court even the abatement would not come into play. Learned counsel also submits in case, the Court is inclined to intervene in the matter, the matter may be remanded to the Court concerned with opportunity to the plaintiff respondent to move appropriate application for setting aside abatement.

5. Having regard to the submission made on behalf of the parties, the simple issue involved is whether the learned trial court was justified in allowing the substitution petition when the suit is already abated against the deceased defendant.

Order 22 Rule 4 reads as under:

“4. Procedure in case of death of one of several



defendants or of sole defendant.

(1)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.

(2)Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3)Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4)The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5)Where-

(a)the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the [Limitation Act, 1963](#)(36 of 1963) and the suit has, in consequence, abated, and

(b)the plaintiff applies after the expiry of the period specified therefor in the [Limitation Act, 1963](#)(36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

the Court shall, in considering the application



under the said section 5, have due regard to the fact of such ignorance, if proved.”

From perusal of the aforesaid provision it is obvious that if in the period of limitation no application is made for setting aside the abatement, the suit shall abate as against the deceased defendant.

6. In the light of clear provision of law, it is apparent that the order impugned has been passed against the provision of law as substitution petition has been allowed without setting aside the abatement and hence the impugned order dated 04.05.2023 could not be sustained and it is set aside.

7. Accordingly, the present petition is allowed.

8. However, the plaintiff/respondent is at liberty to move appropriate application for setting aside abatement and thereafter seek substitution of deceased defendants and the learned trial court would pass orders after due consideration of law as applicable to the facts of the case.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.04.2025
Transmission Date	N/A

