

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 951 of 2023
Hari Shankar Yadav
VERSUS
Renu Yadav & Ors.

For the petitioner:

Mr. Dyutiman Banerjee, Adv.

For opposite party no. 1 to 3

Mr. Ayan Banerjee, Adv.
Ms Debasree Dhamali, Adv.
Ms. Riya Ghosh, Adv.

Last Heard On: March 20, 2025

Judgment On: March 26, 2025

Biswaroop Chowdhury,J:

1. The petitioner before this Court is a defendant in a suit for declaration and permanent injunction and is aggrieved by the Order dated 19-01-2023 passed by the Learned Court of Civil Judge (Junior Division) 3rd Court Howrah in Title Suit No. 379 of 2020. The petitioner being aggrieved by the Order dated 19-01-2023 passed by the Learned Trial

Judge allowing prayer for substitution has come up with this application under Article 227 of the Constitution of India.

2. The case of the opposite party no 1, 2 and 3 in the application for substitution made under Order 22 Rule 3 CPC before the Learned Trial Court may be summed up thus:

A) That the sole plaintiff filed suit for declaration and permanent injunction.

B) That the sole plaintiff namely Shaligram Yadav died intestate on 13-04-2021 leaving behind the following persons under the following relationship as his legal heirs and successors and right to sue survive.

Name	Age	Relationship	Address
Smt Renu Yadav.	49	Widow of pre-deceased son.	220 Pratap Ghosh Sarani Jagacha Howrah.
Abhinav Yadav.	26	Grandson	Do.
Anubhab Yadav	22	Grandson	Do.
Smt Urmila Ghosh	56	Daughter	Do.

- C) The above named persons and the defendant are the only legal heirs of deceased plaintiff and interested to proceed with the suit. The right to sue survives.
3. Prayer was made before the Learned Court to incorporate the names of opposite parties no- 1 to 4/applicants and to delete the name of the sole plaintiff Shaligram Yadav. Death certificate of the sole plaintiff was also enclosed.
 4. The petitioner/defendant submitted objection to the application.
 5. It is the contention of the defendant/petitioner that the statements made in paragraph no-2 of the said petition is false and frivolous. It is further contended that the applicants are not the heirs of the deceased plaintiff and as per Hindu Succession Act deceased male's surviving heirs are his mother, wife, son and daughters but in the instant case the applicants failed to mention the same. It is also contended that the applicants are not the legal representative of the deceased plaintiff of the instant case and they have not properly sworn the affidavit and hence their statements cannot be relied.
 6. By Order dated 19/01/2023 the Learned Trial Court was pleased to allow the application made under Order 22 Rule 3 by the applicants/opposite parties no. 1 to 3 by observing and directing as follows.

'Record is taken up for hearing of application under Order 22 Rule 3 of CPC dated 31-07-2021 wherein the petitioner stated that the sole plaintiff

Shaligram Yadav died on 13.04.2021 leaving behind the petitioners as their legal heir are required to be substituted in place of sole deceased plaintiff.

Defendant filed written objection against the same and denied and disputed all facts of the petition and prayed for rejection of the same.

Heard Ld. Advocate for the both sides.

It is fact that the instant petition is within time, therefore there is no impediment to allow the said petition.

Hence it is.

ORDERED.

That the petition under Order 22 Rule 3 of CPC filed by the petitioner on 31.07.2021 is hereby allowed on contests but without costs.

Let the name of deceased sole plaintiff be deleted from the cause title of the plaint. Let the names of Legal heirs of the deceased plaintiff be substituted as plaintiff respectively as per schedule of the petition dated 31-07-2021 in the cause title of the plaint. Note changes in register. Let the name of the deceased sole plaintiff be deleted from the cause title of the plaint. Extension petition filed by the petitioner is considered and allowed. Ad-interim order is extended till the next date fixed.

Fix 12/04/2023 for hearing of Order 7 Rule 14 of CPC w/o if any in the meantime.'

7. The petitioner being aggrieved by the Order dated 19-01-2023 passed by the Learned Trial Court has come up with this application under Article 227 of the Constitution of India.
8. It is the contention of the petitioner that the Learned Trial Court below erred in law in allowing the application by not considering that the application has been filed by only the opposite party no-1 and hence the opposite parties cannot be impleaded as plaintiffs. It is further contended that the Learned Trial Court erred in allowing the application for substitution which was filed beyond time. It is also contended that the Learned Trial Court erred in law in allowing the application by not considering that the application does not contain any schedule and hence ought to have been dismissed by the Learned Trial Court.
9. Pursuant to the filing of this application notice was issued upon the opposite parties. Opposite party no. 1 to 3 appeared and contested the case but opposite party no-4 did not appear.
10. Heard Learned Advocate for the petitioner and Learned Advocate for opposite party no. 1, 2 and 3 perused the petition filed and materials on record.
11. Learned Advocate for the Petitioner submits that the application for substitution is completely erroneous as only the opposite party no-1 filed the said application, but she has prayed for impleading all the legal heirs as plaintiffs Learned Advocate for the petitioner further

submits that statute does not provide that the legal heirs of the deceased plaintiff be also made plaintiffs in the suit even when the application has been made by one of the legal heirs of the deceased plaintiff. Learned Advocate also submits that the application filed by the opposite party no-1 is erroneous since the opposite party no-1 has made prayer before the Learned Court that all the legal heirs of said Shaligram Yadav be added as plaintiffs.

12. Learned Advocate for the opposite party no 1 to 3 submits that the application for substitution under Order 22 Rule 3 of the Code of Civil Procedure was signed by the opposite Party no-1 to 3 along with vokatatnama. Learned Advocate further submits that although the opposite party no-1 did not state in the affidavit of the substitution application that she is authorized by the opposite party no-2 and 3 to affirm the application but the same is a curable defect. Learned Advocate also submits that an application is pending before Learned Trial Court for transposing opposite party no-4 from plaintiff to Proforma defendant.

13. Before proceeding to decide the material in issue it is necessary to consider the provisions contended in Order 22 Rule 3 of the Code of Civil Procedure.

14. Order 22 Rule 3 of the Code of Civil Procedure provides as follows:

Order 22 Rule-3-Procedure in case of death of one of several plaintiffs or of sole plaintiff-1) where one of two or more plaintiffs dies and the right to sue

does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives the Court on an application made in that behalf shall cause the Legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned and on the application of the defendant the Court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff.

15. The period of Limitation as prescribed in Article 120 of the Limitation Act 1963 is ninety days from the date of death of either the plaintiff or defendant.

16. Although different grounds were taken by the petitioner in this Revisional Application but as the Learned Advocate for the petitioner confined his arguments only to the issue that as application for substitution was filed by opposite party no-1 only, opposite party no-2, 3 and 4 ought not to have been added as plaintiffs this Court thinks reasonable to address on that issue, only.

17. At the very outset upon perusal of the application under Order 22 Rule-3 of the Code of Civil Procedure it will appear that it was prayed to incorporate the names of the petitioners in the cause title of the plaint on deletion of the name of deceased plaintiff namely Shaligram Yadav. Further upon perusal of the objection filed by the petitioner/defendant it will appear

that the petitioner/defendant in paragraph no-7 and 9 of his objection has referred to the application filed by the applicants and not a single applicant. Paragraphs no-7 and 9 of the objection of petitioner/defendant are produced herein below for clarity.

‘7. That the statements made in paragraph no.2 of the said petition is completely false and frivolous and the applicants are put to strict proof of their statements.’ Your petitioner states that the applicants are not the heirs of the deceased plaintiff. Your petitioner states that as per Hindu Succession Act deceased males surviving heirs are his mother, wife, son and daughters but in the instant case the applicants failed to mention the same.’

‘9. That your petitioner/defendant states that the applicants are not the legal representative of the deceased plaintiff of the instant case and they have not properly sworn the affidavit and hence their statements cannot be relied.’ Thus upon plain reading of Paragraph 7 and 9 of the objection submitted by the petitioner/defendant it is clear that the application was taken out by more than one applicant. Moreover there is no mention in the objection that the application is not signed by all applicants.

Upon considering the prayer portion of the application for substitution and the objection for substitution and upon considering the submission made by the Learned Advocate for the opposite party no-1, 2 and 3 that the petition for substitution and vokalatname were signed by opposite party no. 1,2 and 3 it can be safely concluded that the petition for substitution was filed by

opposite party no. 1,2 and 3. Although the opposite party no-1 has not mentioned that she was authorized by the opposite party no-2 and 3 to submit the application but such error is not fatal. Now the point for consideration is whether the Learned Trial Court committed any error in adding opposite party no-4 as plaintiff when she did not submit the application.

18. Upon plain reading of Rule-1 of Order XXII of the Code of Civil Procedure it will appear that the death of a plaintiff or defendant will not cause the suit to abate-if the right to sue survives.

19. Rule 3(1) of Order XXII of CPC provides that on the death of the sole surviving plaintiff if the right to sue survives the Court on an application made in that behalf shall cause the legal representative of the deceased plaintiff to be made party and proceed with the suit.

20. Although the provision contained in Sub-Rule 1 of Rule 3 of Order XXII of the Code of Civil Procedure provides that on an application being made regarding death of the sole plaintiff and prayer to substitute the legal representative the Court shall cause the legal representatives to be made as a party and proceed with the suit but nowhere it is provided that an application is to be made by all the legal representatives of the party, who sought to be substituted. As death itself is a pathetic incident and has an impact in the mind of the near relations of deceased for a certain period it may not be possible for the legal representatives of the deceased plaintiff to take steps in the suit within a short period. Moreover when there are more than one legal

representatives of a sole deceased plaintiff and residing in different places, it may not be possible to obtain signatures from all the legal representatives. Hence in order to save the suit from being abated it will suffice that an application for substitution is submitted by any one of the legal representatives of the deceased plaintiff mentioning all the names of the legal representatives with a prayer for substitution. It is to be remembered that application for substitution is not commencement of any proceedings but it is a prayer for permission to continue the proceedings which is stalled due to death of a party. In case of institution of any suit or proceeding all procedures as laid down under law has to be complied at the outset. However as substitution application on account of death of plaintiff is not commencement of proceeding but prayer for permission to continue the proceeding rigid view should not be taken at the inception but on the prayer of any of the legal representative the legal representatives of the deceased plaintiff should be substituted as plaintiffs to proceed with the suit so that at subsequent stage the legal representatives can take steps to execute relevant documents and file necessary petitions to regularize their substitution as plaintiffs. In the later stage if the Court finds that any of the legal representatives who are substituted are not represented with other plaintiffs by any Advocate or have not filed petition required under law or have refused to proceed jointly with the other plaintiffs the Court may if it thinks fit transpose the legal representative substituted as plaintiff to that of a proforma defendant. In exceptional circumstances Court may consider the

application filed by defendant or respondent about death of plaintiff and names of legal representatives.

21. The Hon'ble Supreme Court in the case S. Amarjit Kalra VS Promod Gupta reported in AIR 2003. S.C. 2588 observed as follows:

'Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 of CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination into an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain in tact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the Khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in Jamabandhi itself of the shares of each of them distinctly. We are also of the view that the High Court

should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehorn the cause for the delay in filing the applications keeping in view the serious manner it would otherwise jeopardize an effective adjudication on merits, the rights of other remaining appellants for no fault of them. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttle the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bring on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of Court to do real, effective and substantial justice. Viewed in the light of the fact that each one of the appellants had an independent and distinct right of his own not inter- dependent upon the one or the other of the appellants, the dismissal of the appeals by the High Court in their entirety does not constitute a sound, reasonable or just and proper exercise of its powers. Even if it has to be viewed that they had a common interest, then the interests of justice would require the remaining other appellants being allowed to pursue the appeals for the benefit of those others, who are not before the Court also and not stultify the proceedings as a whole and non-suit the others, as well.'

22. In the case of Abdul Samad and ors V Wasal and others reported in AIR 1957. Rajasthan P-302 the Hon'ble Court observed as follows:

‘3. On behalf of the appellants reliance is placed on the words 'legal representatives' occurring in Order 22 Rule 3(1) of the Civil Procedure Code which runs as follows:

"Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit."

It is urged that the words 'legal representative' do not mean all the legal representatives and that it is not necessary that an application for bringing all the legal representatives on record should be made. Reliance is placed on the case of 'Bhikaji Ram-chandra v. Purshotam' I L.R 10 Bom 220 (A). In that case one Bhikaji Ramchandra died during the pendency of appeal filed by him. Bhikaji had left three sons, two adults and one minor. Notice was served on the two adult sons but they failed to apply within sixty days. The minor son applied within the time prescribed by law to be made a party. This application was rejected by the Court hearing the appeal on the ground that in consequence of the omission on the part of the two adult brothers to apply, the appeal abated. On appeal to the High Court by the minor son, the following observations were made by Sergeant C. J.:

"It is true that the complete legal representation as a fact is vested in him and his two brothers, but Section 366 only requires an application to be made

by a person claiming to be the legal representative, to prevent the order of abatement being made."

The only question which arises, therefore is, how the appeal is to proceed, on the supposition that neither of the other brothers, as we assume to be the case, is willing to have his name placed on the record ? Under these circumstances, the respondent is entitled to have them made defendants, so that they may be bound by the decree. The minor son can then proceed with the appeal alone."

The facts of the above case clearly show that it had been brought to the notice of the Court that the deceased Bhikaji Ramchander had three sons who were the legal representatives. Under Order 22 Rule 3 (1) if an application is made disclosing all the legal representatives of the deceased, the Court may make an order that they may be made parties either as plaintiffs or as defendants.'

The Hon'ble Court further observed as follows:

'5. The spirit of Order 22 of the Civil Procedure Code may be taken to be to determine the rights and liabilities of the parties finally and conclusively if it is possible to do so in cases in which any one of the parties dies. A case should not be left undecided. It is not meant to be left at an intermediate stage if it is possible to have it finally determined. In case of the death of a plaintiff when the court comes to know of his death and of the persons who are competent to

represent the deceased plaintiff after his death, it is competent for the court to take suitable action. Viewed in this light, in my humble opinion the words 'legal representative' must be construed as including those persons who are in opposition to carry on further proceedings in the suit. Normally such persons are all the heirs of the deceased plaintiff. There may be cases where even some of the heirs may represent the deceased plaintiff. In all the cases, such persons may be the legal representatives of the deceased within the meaning of Order 22, Rule 3 of the Civil Procedure Code.

6. An application must be made for bringing on record those persons who had the right in law to continue the suit filed by the deceased plaintiff, that is who represent him for the purpose of prosecuting the suit. If their names have been brought to the notice of the court, it becomes the duty of the court to array them as party whether as plaintiffs or defendants. Order 22 rule 3 (1) is purposely worded in sufficiently wide language. Once the court is made aware of the persons who are in the position to prosecute the suit, it is left to it to make them a party.'

23. In the case of G.V. Arunachalam AAIYAR VS LAKSHMINARASIMHAM reported in AIR-1948 Madras P-82 an application was filed by respondent no-2 in the appeal who, was defendant 2 in the suit. Respondent 1 was the plaintiff and the appellant was defendant. The suit was decreed in favour of the plaintiff respondent 1 respondent no-2 filed cross objections in the appeal seeking to obtain relief against respondent-1. The appellant died a few months ago and an

applications by respondent 2 to bring on record the legal representatives of the appellant, made within time. On the objection of the respondent no-1, that only the legal representatives of the appellant can make the application, the Hon'ble Court observed as follows:

4. 'It is opposed by respondent 1 the argument being that only the legal representatives of the appellant can make the application which is not one available at the instance of, in this case respondent 2. In support of the argument reference was made to C.22 Rule 9(2) Civil P.C. which limits an application to set aside an abatement to the legal representatives of the deceased plaintiff or others to whom reference is now not necessary. I can find no similar limitation in respect of an application to bring on record the legal representatives of a deceased plaintiff or a deceased appellant at the instance of a respondent in an appeal, when there has not been an abatement.'

24. Upon comparative study of Rule 9 and Rule 3 Order XXII CPC it will appear that in Rule 9(2) where application for setting aside abatement is required to be filed the same has to be made by either the surviving plaintiff if there are more than one plaintiff or by legal representative of a deceased, Plaintiff or the assignee or receiver in the case of an insolvent plaintiff but in the provision contained in Rule 3(2) there is no specific provision as to who may file application to bring heirs of deceased plaintiff on record.

25. Thus upon considering the provisions contained in Order XXII Rule 3 Sub Rule 1 CPC along with the provisions contained in Order XXII Rule 9 (2) CPC it is clear that Courts have power under Order XXII Rule 3(1) CPC to add any legal representative of a deceased plaintiff on the petition of another legal representative or even defendant/respondent to do complete justice between the parties and prevent multiplicity of litigation.

26. Upon considering the provisions contained in Order XXII Rule (3) Sub Rule-1 of the Code of Civil Procedure this Court is of the view that the Learned Trial Court has not committed any error in allowing the petition for substitution. Thus this Revisional Application fails and the same stands dismissed.

27. Hence this Revisional Application is dismissed. Order dated 19/01/2023 passed by Learned Court of Civil Judge (Junior Division) 3rd Court Howrah in Title Suit No-379 of 2020 is affirmed. However as an application is pending before the Learned Trial Court for transposing opposite party no-4 from plaintiff to proforma Defendant the said application may be considered and decided in accordance with law. It is hereby made clear that this Court has not gone into the merits of the suit and all points are left open.

28. Urgent Photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)