CGHC010094522018 2026:CGHC:44264

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SAIFAN KHAN Digitally signed by SAIFAN KHAN

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on : 22.09.2026

Judgment Pronounced on : 13.10.2026

Judgment Uploaded (Full) on : 13.10.2026

FA No. 201 of 2018

[Arising out of judgment and decree dated 13.02.2018, passed by the Addl. District Judge, Dhamtari (CG) in Civil Suit No.629A/2012 (Pratej Singh and others v. Savarnkaur and others)]

1 - Savarnkaur Wd/o Avatarsingh Bhabra Aged About 74 Years R/o Bhabra Building, Ratnabandha Chowk, Bastar Road, District Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh

2 - Lovely Kaur @ Jaspalkaur (Not Mention In Judgment) Wd/o Gunjeetsingh @ Banti Bhabra Aged About 48 Years R/o Bhabra Building, Ratnabandha Chowk, Bastar Road, District Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh

3 - Taranraj Singh S/o Late Gunjeetsingh Bhabra Aged About 25 Years R/o Bhabra Building, Ratnabandha Chowk, Bastar Road, District Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh

4 - Rashraj Singh S/o Late Gunjeet Singh Bhabra Aged About 23 Years R/o Bhabra Building, Ratnabandha Chowk, Bastar Road, District Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh

5 - Gurmeet Kaur Dhanai W/o Narendrapal Singh Aged About 51 Years R/o Nehru Nagar, Durg, District Durg, Chhattisgarh, District : Durg, Chhattisgarh

5.1 - (A) Smt. Nadira @ Rinu Kaur Wd/o Late Satvindar Singh Aged About 46 Years R/o C/o Ganpat Vashnik Plot No. 419, Hanuman Mandir Gali Gid Chowk, Sanyog Nagar, Nagpur-26, Post Uppalwadi, District Nagpur (Maharashtra), District : Nagpur, Maharashtra

5.2 - (B) Ku. Minor Raunshi Kaur D/o Late Satvindar Singh Aged About 17 Years Guardianship Of Smt. Nadira @ Rinu Kaur Wd/o Satvindar

Singh Bhabra, R/o C/o Ganpat Vashnik Plot No. 419, Hanuman Mandir Gali Gid Chowk, Sanyog Nagar, Nagpur-26, Post Uppalwadi, District Nagpur (Maharashtra), District : Nagpur, Maharashtra

... Appellants

Versus

1 - Pratej Singh (Died) Through Lrs As Per Honble Court Order Dated 06-08-2025.

1.1 - Raj Bhabra W/o Late Pratej Singh Aged About 70 Years R/o Bhabra Building, Ratanabhandha Chowk, Dhamtari, Bastar Road, District- Dhamtari, Chhattisgarh

1.2 - Shailvinder Kaur Bhabra D/o Late Pratej Singh Aged About 42 Years R/o Bhabra Building, Ratanabhandha Chowk, Dhamtari, Bastar Road, District- Dhamtari, Chhattisgarh

1.3 - Amandeep Singh Bhabra S/o Late Pratej Singh Aged About 40 Years R/o Bhabra Building, Ratanabhandha Chowk, Dhamtari, Bastar Road, District- Dhamtari, Chhattisgarh

2 - Jashbir Kaur Wd/o Harcharansingh Bhabra Aged About 68 Years R/o Bhabra Building, Ratnabhandha Chowk, Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh

3 - Gurdeep Kaur W/o Honey Khalaf Aged About 45 Years D/o Harcharansingh, C/o Randhirsingh 544, Aashidham Law College Chowk, West High Court Road, Dharampeth, Nagpur (Maharastra), District : Nagpur, Maharashtra

4 - Kulwantsingh S/o Late Harcharansingh Aged About 43 Years R/o 544 Aashidham Law College Chowk, West High Court Road, Dharampeth, Nagpur (Maharastra), District : Nagpur, Maharashtra

5 - Paramjeet Singh S/o Late Harcharansingh Aged About 42 Years R/o 544 Aashidham Law College Chowk, West High Court Road, Dharampeth, Nagpur (Maharastra), District : Nagpur, Maharashtra

6 - Randhirsingh S/o Late Harcharansingh Aged About 41 Years R/o 544 Aashidham Law College Chowk, West High Court Road, Dharampeth, Nagpur (Maharastra), District : Nagpur, Maharashtra

7 - Smt. Satvant Kaur W/o Shri G.C.Singh Aged About 68 Years D/o Late Jaswantsingh Bhabra, R/o Green Park Taigor Road, Civil Lines, Nagpur-440001, District : Nagpur, Maharashtra

8 - Smt. Rajpal Shondhi Wd/o Preetpalsingh Shondhi D/o Late Jaswantsingh Bhabra, R/o 237-238 South City-1, Gungaon, District Gungaon (Hariyana) (Plaintiffs), District : Gurgaon, Haryana

... **Respondents**

Cause-title taken from Case Information System (CIS)

For Appellant : Mr. Gyan Prakash Shukla, Advocate
For Respondents: Mr. Shobit Koshta and Mr. Rajendra Kuamr, Advs.

Single Bench: Hon'ble Mrs. Justice Sushma Sawant

CAV Judgment

1. Invoking the appellate jurisdiction of this Court under Section 96 of the Code of Civil Procedure, 1908, the appellants herein/defendants have preferred this appeal challenging the judgment & decree dated 13.02.2018, passed by the Addl. District Judge, Dhamtari (CG) in Civil Suit No.629A/2012 (Pratej Singh and others v. Savarnkaur and others), by which the learned Additional District Judge has decreed the suit filed by **respondent No.01/plaintiff- Pratej Singh** for declaration of partition of 1/6 share in the suit house and also for separate possession in respect of the same.

2. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the trial Court.)

Factual Matrix

-:Admitted facts between the parties:-

3. It is an admitted fact in the case that original plaintiff/respondent No.01 herein- Pratej Singh, late Harcharan Singh, late Avtar Singh, Smt. Satwant Singh (defendant No.11/respondent No.7

herein), Smt. Rajpal (defendant No.12/respondent No.8 herein) and late Smt. Iqbal, are all brothers and sisters and are the sons/daughters of Dr. Jaswant Singh Bhabra and Smt. Mohini Devi. The property in dispute is ancestral property.

4. The family tree of late Smt. Mohini Bai Bhabra, W/o Late Jaswant Singh Bhabara is as follows:

<table>
<tr><td colspan="6">Late Mohini Devi Bhabra (deceased),
wife who predeceased her: late Dr. Jaswant Singh Bhabra.
|</td></tr>
<tr><td>Son:
Late Haricharan Singh
|</td><td>Son:
Avtar Singh
|
|
|</td><td>Daughter:
Satwant @ Pawan
(Defendant No.11)</td><td>Son:
Pratej Singh
(plaintiff)</td><td>Daughter:
Rajpal
(Defendant No.12)</td><td>Daughter:
Iqbal
(Defendant No.13)</td></tr>
<tr><td>Jasveer Kaur
(Defendant-6)
Gurdeep Kaur
(Defendant-7)
Kulwant Singh
(Defendant-8)
Paramjeet Singh
(Defendant-9)
Randhari Singh
(Defendant-10)</td><td>Swarnkar (Wd)
(Defendant-1)
Daughter-Gurmeet Kaur
(Defendant-5)
LRs of Late Banti (Gunjit)-
Lavli (Jaspal) Kaur
(defendant-2)
Tarunraj
(defendant-3)
Rasraj
(defendant-4)</td><td></td><td></td><td></td><td></td></tr>
</table>

-:Description of suit property :-

5. As per the averments made in the plaint, the suit property has been described as under:

"**As per revenue record- House situated on Mutation Sheet No. 07, Khasra No. 482/2, Plot No. 47 and according to the Nazul records- Sheet No. 20-C, Plot No. 26/2, area 62 square meters. The map of first and second floors thereof is annexed in the plaint. The northern side of the said property is stated to be bounded by National Highway No. 43, the southern side by the Municipal Road, the eastern side by Manoharlal's house, and the western side by J. Martin's house. The original sale deed is not available with the plaintiff. The registered deed records the area as 3,135 square feet. However, as per the measurements taken by the architect/engineer and the site plan prepared by him, the total plot area has been calculated as 3,802 square feet** (hereinafter referred to as the "suit property")**.**"

-:Case of the Respondent No.01/Plaintiff- Pratej Singh before the Trial Court:-

6. The case of the respondent No.01/plaintiff, in brief, is that on 13.09.1957 late Mohini Devi purchased the suit property from Maksudan Bee and Saeeda Khatun by way of registered sale deed for consideration of Rs. 7,500/- and came into the possession of the suit property and, thereafter, the names of all the parties were recorded in the revenue records i.e Kistbandh B1 and Khasra by way of mutation dt. 25.03.2010. The suit property is known as "Bhabra Building" in the city.

7. It is further pleaded that the family of respondent No.01/plaintiff, the family of defendant no.6 and the family of appellant No.01/defendant no.1 are residing after making their own houses in the suit property and further aforesaid suit house and property is a joint property of the family members and no partition has been taken place. In the year 1994, in order to obtain separate possession of the suit house, son of the appellant No.01/defendant no.1 late Gunjeetsingh @ banti had prepared unregistered deed of family settlement through his advocate and without consent of the other co-sharers obtained the signature of the respondent No.01/plaintiff and defendant no.6 in the said deed forcibly. It is further pleaded that the said deed of family settlement is not valid due to non registration and lack of consent with the other co-sharers. Thus, as per Hindu law other co-sharers are also entitled to get 1/6 share in the suit property.

8. It is also pleaded in the plaint that in the year 2011, dispute arose between the parities for receiving the rent and possession of the shops situated in the suit property and criminal case was also initiated under Section 145 of CrPC between the parties. In the year 2012 another dispute arose for the part of the English liquor shop and further the appellant/defendant no.1 with the help of her son-in-law and outsiders tried to occupy the suit house forcibly. Hence, with aforesaid pleading, the respondent No.01/plaintiff filed a civil suit before the learned trial Court seeking a decree for

declaration of partition of 1/6 share in the suit house and also for separate possession in respect of the same

-:Written Statement of the Defendants before the Trial Court:-

9. The appellants/defendants filed its written statement and denied the averments of the plaint except the admitted facts and submitted that the civil suit filed by the respondent No.01/plaintiff, is barred by limitation and further respondents/defendant no.10, 11 & 12 have no title and right over the suit property at all because subsequently on 17.05.1994 partition already took place between the Respondent No.1/plaintiff no.1, late Avtarsingh and late Harcharansingh and they have occupied their own part in the suit property. The suit property was purchased by late Sardar Jaswantsingh Bhabra of his own income and, thus, he became the absolute owner of the suit property.

10. It was further submitted that after partition the appellant/defendant no.1 is receiving the rent amount and neither dispute nor quarrel raised with regard to receiving the rent amount ever by any party and further submitted that as per the deed of family settlement dated 17.05.1994 the respondent No.01/plaintiff accepted the title and ownership of the successors of the appellant/defendant no. 1 to respondent/defendants no. 5 (A), (D) (II) and they are in possession of the suit property as mentioned in the deed of family settlement dated 17.05.1994.

11. It was further submitted that some dispute arose between the respondent No.01/plaintiff and appellant/defendant no.1 with regard to the wall situated between the two shops, upon which, on 25.05.2012 the Sikh society settled the dispute by way of an agreement that the rent received from the said shops will be distribute by the Sikh society amongst them but the respondent/plaintiff no.1 and his family violated the terms of the deed of family settlement and the aforesaid agreement and trying to change the structure of the suit property as well as trying to enter into possession illegally in the suit property. Hence, on the basis of the above averments, it was prayed that the civil suit is liable to dismiss on grounds including misjoinder of parties, limitation and improper valuation.

-:Stand of the respondents/Defendant No.06 to 12 before the trial Court:-

12. The defendant no.6 to defendant no. 12 separately filed their written statement and supported the case of the respondent No.01/plaintiff and submitted that after the death of Mohini Devi, respondent No. 11 received one sealed envelope through his uncle namely late Sardar Chandan Singh and after opening the envelope there are some documents found i.e will, power of attorney and nomination letter left by Mohini Devi, pursuant to which, all parties are entitle to get rent which is received from the suit shops as well as entitle to get their 1/6th share in the suit property. Hence, they prayed to allow the civil suit filed by the respondent/plaintiff no.1.

-:Counter Claims of the respondent/defendant No.11 before the trial Court:-

13. That, the respondent/defendant no.11 filed a separate counter-claim on the basis of will deed dated 04.06.1989 executed by late Mohini Devi, Wife of late Sardar Jaswantsingh Bhabra and, according to which, all the legal heirs of late Mohini Devi Bhabra entered into an agreement in order to equally distribute 1/6 share of the suit property, but later on, without consent of the respondent/defendant no.11 to no.13, the respondent No.01/plaintiff and appellants/defendant no.1 to no.6 had prepared the deed of family settlement, in which, neither their names are mentioned nor their signatures are present and, due to which, they are deprived of their rights and further the alleged deed is not registered as required under Section 17 of the Registration Act, 1908 and further as per Section 23 of the Hindu Succession Act, 1956 they are entitled to get 1/6 share in the suit property. Hence, on the basis of the family arrangement and continuing cause of action, the counterclaim was filed on 09.05.2012 seeking the relief stated in paragraph 12 of the counterclaim.

-:Reply of the respondent No.01/plaintiff to the counter-claim of the respondent/defendant No.11 before the trial Court:-

14. On the other hand the respondent/plaintiff no.1 filed her written statement and denied the averment of the counter claim except the admitted fact.

-:Findings of the learned trial Court:-

15. That, the learned Trial Court on the basis of the pleadings and the written statement as well as the material evidence available on record, has framed as may as 17 issues and after due consideration of the facts and circumstances of the case, allowed the civil suit filed by the respondent No.01/plaintiff and counterclaim filed by the respondent/defendant no.11 by holding thus:

> "**In respect of the suit property, Dr. Jaswant Singh Bhawra and Smt. Mohini Devi Bhawra alongwith their three sons- Pratap Singh, Late Avtar Singh and Late har Charan Singh and 03 daugthers- Smt. Satwant Singh, Smt. Rajpal and Late Smt. Iqbal, all are entitled to 1/6th share each and are entitled to have their respective shares separated by partition and to obtain separate possession.**"

16. Being aggrieved by the aforesaid findings of the trial Court, the appellants herein have filed this appeal on the following grounds:-

(i) That the impugned judgment and decree passed by the learned trial Court is illegal, erroneous and contrary to law.

(ii) That the learned Trial Court without considering the facts and circumstances of the case failed to proper examine the legality and validity of the alleged will dated 04/06/1989 (Ex-D/9) and, therefore, the finding on issue no.3 that by virtue of alleged will deed daughters of late Mohini Devi are also entitled to get 1/6 share in the suit property is not only bad but also contrary to law.

(iii) That the learned trial court has given perverse finding on issue no.5 that the suit property was self acquired property of late Mohini Devi and, therefore, the finding of the trial court is not only bad but arbitrary in nature and will executed by late Mohini Devi is not valid.

(iv) That the learned trial court failed to consider the facts that the respondent/plaintiff's suit is barred by limitation and further the existence of the deed of family settlement and the alleged will deed are undisputed in the present civil suit, hence the plaintiff's suit as well as counterclaim filed by the respondent/defendant no.11 are not maintainable as barred by limitation.

(vi) That, the Learned Trial Court without properly considering the facts and circumstances of the case and also acted illegally and with material irregularity in exercise of its jurisdiction in respect of the civil suit No.629A/2012, decreeing the suit against the appellants/defendants is not only bad in law but also arbitrary in nature.

(vii) That the suit for partition ought to have been dismissed as abated for non substitution of the legal representatives of deceased No.11 on records.

-:Proceedings before Appellate Court :-

17. Heard on the Appeal. In the context of the appeal and arguments, evidence and documents, available on record of the trial Court were examined.

-:Points for determination :-

18. In order to dispose of both the First Appeals, following questions are to be considered:-

(i) Whether the entire suit stood abated on account of the failure to bring the legal representatives of deceased defendant Iqbal on record?

(ii) Whether the judgment and decree passed by the Trial Court, granting the plaintiff a one-sixth share in the suit property, suffer from any illegality or infirmity warranting interference in this appeal?

-:Arguments of the Appellants:-

19. The learned counsel for the appellant/defendants argued that **Iqbal**, the sixth child of **Mohini Devi**, who was impleaded **as a defendant** in the original suit, died on 05.09.2016 during the pendency of the suit. However, the application filed under Order XXII Rule 4 of the CPC for bringing her legal representatives on record was not pressed, and her legal representatives were consequently not brought on record. With the permission of the Court, her name was deleted from the array of parties on 24.03.2017. It was, therefore, contended that the plaintiff's **Pratej Singh** suit had already abated before the Trial Court itself. It was further argued that the **plaintiff Pratej Singh** had deliberately adopted this course to manipulate Iqbal's share and thereby secure the same for himself.

20. The learned counsel for the appellants/defendants further placed reliance on **Suresh Chandra (Dead) v. Parasram, 2025 SCC OnLine SC 1427**, and submitted that the Hon'ble Supreme Court, in the said judgment, has laid down the principles governing the circumstances in which a suit or appeal abates in its entirety and those in which the abatement is only partial. It was contended that, in view of the settled legal position and the principles laid down in the aforesaid judgment, owing to the failure to bring the legal representatives of the original defendant Iqbal on record within the prescribed period, the plaintiff's suit had abated in its entirety, rendering the judgment and decree passed by the Trial Court defective and unsustainable in law.

-:Arguments of the Respondents:-

21. *Per contra,* the learned counsel for the respondent/plaintiff, contended that the failure to bring the legal representatives of deceased **defendant Iqbal** on record would not result in abatement of the entire suit, as all the other persons having rights in the suit property were already on record. Reliance was placed on **T. Gnanavel v. T.S. Kanagaraj and Another, (2009) 14 SCC** 294, in support of the contention that the Court has the power under Order XXII Rule 4 CPC to exempt the plaintiff from the necessity of substituting the legal representatives of a deceased defendant.

22. Further reliance was placed on **Dolai Maliko (Dead) v. Krushna Chandra Patnaik and Others, 1966 SCC OnLine**

SC 152; **Morasa Anjaiah v. Kondra Gunte Venkateswarlu, 1992 SCC OnLine AP 20**; **Kishorilal (D) v. Gopal and Others, 2026 SCC OnLine SC 53**; and **Mahmud Mian v. Shamsuddin Mian, (2005) 11 SCC 582**, in support of the contention that the suit does not necessarily abate in its entirety on account of the failure to bring the legal representatives of a deceased defendant on record.

23. It was argued that the legal principles laid down in the aforesaid judgments are equally applicable to the facts and circumstances of the present case and, therefore, the Trial Court committed no error in proceeding with the suit without holding that the entire suit had abated. On this basis, the learned counsel submitted that the decision of the Trial Court is proper and warrants no interference.

-: Details of evidence and documents available before the trial Court:-

24. Before the trial Court, the witnesses examined on behalf of the plaintiff are- Shailvinder Kaur **(PW-01)**, Smt. Jasbir Kaur **(Pw-02)** and Dhirendra Rao **(PW-03)** and exhibited documents vide **Ex.P/01 to Ex.P/22C.** Whereas, in defence, defendants examined Smt. Savarnkaur **(DW-01)** and Rakesh Diwan (DW-02) [on behalf of Defendants No.01 to 05] and Gurendra Singh **(DW-01)** [on behalf of defendant No.11] and exhibited documents vide **Ex.D/01 to Ex.D/09**.

-:Analysis of the Appellate Court:-

Points for determination- (I)

"Whether the entire suit stood abated on account of the failure to bring the legal representatives of deceased defendant Iqbal on record?"

25. Although the Trial Court has discussed the evidence in detail, it is significant to note that the fact that the suit property belonged to **Mohini Devi** and that she had **six children** is undisputed. Five of them are on record, either in person or through their legal representatives. Upon the death of **Iqbal, the sixth daughter of Mohini Devi**, the Trial Court, vide order **dated 24-03-2017,** permitted deletion of her name without bringing her legal representatives on record and passed a decree in the following terms:-

> "वादग्रस्त मकान भूमि में डॉ. जसवंतसिंह भाबरा व श्रीमती मोहनी देवी भाबरा के तीन पुत्र - प्रतेजसिंह, स्व. अवतार सिंह, स्व. हरचरण सिंह एवं तीन पुत्रियां -श्रीमती सतवंत सिंह, श्रीमती राजपाल एवं स्व. श्रीमती इकबाल सभी 1/6 भाग हिस्सा, बटवारा व पृथक आधिपत्य प्राप्त करने के अधिकारी हैं।"

26. Thus, an apparent error emerges from the record of the Trial Court, inasmuch as the legal representatives of one of the defendants, **Iqbal**, were not brought on record. Although the decree indicates that the Trial Court considered **late Iqbal** entitled to a one-sixth share in the suit property, the judgment cited by the respondent/plaintiff, **T. Gnanavel v. T.S.**

Kanagaraj and Another, (2009) 14 SCC 294, holds that the Court has the power under Order XXII Rule 4 of the CPC to exempt the plaintiff from the necessity of substituting the legal representatives of a deceased defendant. However, the applicability of this principle depends upon the facts and circumstances of each case, and the said provision does not lay down an inflexible rule applicable to every case.

27. It is particularly noteworthy that this is not a case where **Iqbal**, the daughter of Mohini Devi, had no legal representatives. On the contrary, **paragraph 25 of the cross-examination of Shaili @ Shailvinder Kaur (P.W.-1)** clearly indicates that Iqbal was also married at Devendra Nagar, Raipur, and that her husband and children were residing there.

28. In view of this, the question that arises for consideration is whether the failure to bring Iqbal's legal representatives on record resulted in abatement of the entire suit and whether the Trial Court could have proceeded to adjudicate the matter in their absence ?

29. In this regard, the respondent/defendant has relied upon the judgment in **Suresh Chandra (Dead) v. Parasram, 2025 SCC OnLine SC 1427,** and contended that, having regard to the nature of the suit instituted, the entire suit would abate. The Supreme Court, in this judgment, has expressed its opinion on this issue with reference to various judicial precedents. The

relevant extracts from the said judgment are reproduced herein below.

> "**17.** Having regard to the aforesaid decisions, the law governing determination of the issue as to whether abatement of an appeal on non-substitution of a deceased party is partial or whole, can be summarized as under:
>
> 1. The answer to the question whether the entire appeal abates or it abates partially qua the deceased party alone, will depend on facts of each case and, therefore, no exhaustive statement about the circumstances in which the entire appeal would abate can be made.
>
> 2. As a matter of course courts will not proceed with an appeal (a) when the success of the appeal may lead to the court coming to a decision which is in conflict with the decision between the appellant and the deceased respondent 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 would not be successfully executed.
>
> 3. In a case of 'joint and indivisible decree' or 'joint and inseverable or inseparable decree', the abatement of appeal in relation to one or more of the appellant(s) or respondent(s) on account of failure to bring on record his or their legal representatives in time would prove fatal to the entire appeal because proceeding qua the surviving party or parties may give rise to inconsistent or contradictory decrees.
>
> 4. The question as to whether the decree is joint and inseverable, or joint and severable or separable, must be decided, for the purposes of abatement or dismissal of the entire appeal, only with reference to the fact as to whether the judgment/decree passed in the proceedings vis-à-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees.
>
> 5. 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 which means that the two decrees are mutually irreconcilable or totally inconsistent, that is, if laid side by side, the only impression would be that one is in the teeth of the other.
>
> 6. Where the plaintiffs or appellants have distinct, separate and independent rights of their own i.e., not inter-dependent upon the other, and for the purpose of convenience, or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the court thereon is to be viewed in substance as a combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree.
>
> 7. Existence of a joint right as distinguished from tenancy-in-common is not the criterion of a joint or inseverable or inseparable decree. The joint character of the decree will take colour from the nature of the decree challenged."

30. Although the respondent/plaintiff has also relied upon the judgments in **Dolai Maliko (Dead) v. Krushna Chandra Patnaik and Others, 1966 SCC OnLine SC 152; Morasa Anjaiah v. Kondra Gunte Venkateswarlu, 1992 SCC OnLine AP 20; Kishorilal (D) v. Gopal and Others, 2026 SCC OnLine SC 53; and Mahmud Mian v. Shamsuddin Mian, (2005) 11 SCC 582,** in support of the contention that the entire suit would not abate, it is pertinent to note that **Suresh Chandra (Dead) v. Parasram, 2025 SCC OnLine SC 1427** clarifies that the question of total or partial abatement depends upon the facts and circumstances of each case.

31. Therefore, the present case is being examined in the light of the principles laid down in **Suresh Chandra (supra)**, particularly

the tests governing the nature of the decree and the possibility of contradictory or irreconcilable decrees in the absence of the legal representatives of the deceased party. In the light of the aforesaid principles laid down by the Supreme Court, upon examination of the facts and circumstances of the present case, it appears that the entire suit cannot be held to have abated merely on account of non-substitution of the legal representatives of **late Iqbal**.

32. It is neither a case where, in the absence of the legal representatives of the deceased party, the adjudication would result in contradictory decrees, the necessary relief could not be granted against the surviving parties alone, or the decree against them would be ineffective or incapable of execution, nor is it a case where the rights of the parties cannot be adjudicated separately. On the contrary, several material facts in the present case are undisputed, and the rights of the parties can be determined separately, enabling an effective decree to be passed against the surviving parties. Therefore, applying the principles laid down in **Suresh Chandra (Dead) v. Parasram, 2025 SCC OnLine SC 1427,** the entire suit cannot be held to have abated merely on account of the non-substitution of the legal representatives of late Iqbal.

Points for determination- (ii)

"Whether the judgment and decree passed by the Trial Court, granting the plaintiff a one-sixth share in the suit

property, suffer from any illegality or infirmity warranting interference in this appeal?"

33. With regard to the question as to whether the judgment and decree passed by the Trial Court, granting the plaintiff a one-sixth share in the suit property, suffer from any illegality or infirmity warranting interference in this appeal, it is pertinent to note that **Iqbal** was not residing in the city where the suit property is situated. A perusal of the record further reveals that there is a serious dispute among the **legal heirs of Mohini Devi** regarding possession of the suit property.

34. In such circumstances, if **Iqbal's** legal representatives are not brought on record and are not made aware of the proceedings, There is a possibility that one or more interested parties may misuse or appropriate the share belonging to **Iqbal's legal heirs**. This also raises material questions as to who would be entitled to **Iqbal's share**; whether her legal representatives intend to relinquish their rights and, if so, in whose favour; or, if they do not intend to relinquish their rights, who among them is entitled to claim a share in the property as her legal heir. These aspects required proper examination by the Trial Court.

35. It is significant that, although **Iqbal's** legal representatives were not impleaded as parties, they fall within the category of necessary parties under Order I Rule 10 of the CPC, and their presence was essential for the effective and complete adjudication of the dispute. The Trial Court committed a material error in

overlooking this aspect while passing the decree. In the absence of Iqbal's legal representatives, the decree, insofar as it concerns the determination and enforcement of the respective shares in the suit property, may not be capable of effective execution. Therefore, for the proper and effective adjudication of the dispute, the presence of Iqbal's legal representatives appears to be necessary.

-:Final Conclusion:-

36. In view of the foregoing discussion, the judgment and decree passed by the Trial Court cannot be sustained and deserve to be set aside. Accordingly, the **appeal is allowed**, and the judgment and decree dated 13.02.2018, passed by the Addl. District Judge, Dhamtari (CG) in Civil Suit No.629A/2012 (Pratej Singh and others v. Savarnkaur and others) are hereby set aside.

37. The matter is remanded to the Trial Court for retrial and fresh adjudication in accordance with law, after impleading the legal representatives of **Late Iqbal** as parties and affording due opportunity of hearing to all concerned parties. The Trial Court shall independently examine the matter afresh on its own merits, without being influenced by any observations or findings made in this judgment, which shall not be treated as binding while deciding the suit afresh.

38. Considering that the matter is an old one, the Trial Court is directed to conclude the retrial and decide the suit within three months from the date of receipt of the record. The parties are directed to appear before the Trial Court on **17.11.2026**.

39. The record be transmitted to the Trial Court forthwith.

Sd/-
(Sushma Sawant)
JUDGE

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