IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1499 of 2017

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1. Arbind Kumar Singh Son of late Gopi Singh @ Gopi Ahir

2. Jaivind Kumar Singh @ Jaivind Kumar Son of late Gopi Singh @ Gopi Ahir

3. Shanti Devi @ Mosmat Shanti Devi Wife of late Gopi Singh @ Gopi Ahir

4. Ram Pravesh Singh @ Ram Pravesh Ahir Son of late Mahesh Ahir

5. Suresh Singh @ Suresh Ahir Son of late Mahesh Ahir

6. Guljaro Devi @ Mosmat Guljaro Devi wife of late Ram Chandra Ahir

7. Dadan Singh Son of late Ram Chandra Ahir

8. Madan Singh Son of late Ram Chandra Ahir

9. Amar Singh Son of late Ram Chandra Ahir

10. Sushil Singh @ Sushil Kumar Son of late Ram Chandra Ahir

11. Baijanti Devi @ Mosmat Bijenti Devi Wife of late Birendra Ahir All Resident of Village- Madhurampur, Police Station- Akorhi Gola, District- Rohtas at Sasaram.

12. Lacho Devi @ Laichi Devi wife of Sri Ramashre Singh, daughter of Late Jagdish Ahir Resident of Village- Dighi, Police Station- Barun, District- Aurangabad, At Present resident at Village- Madhurampur, Police Station- Akorhi Gola, District- Sasaram.

... ... Petitioner/s

Versus

1. Lalita Devi Wife of Ram Prasad Singh Resident of Village- Bahuriya Bigha, Police Station- Barun, District- Aurangabad At Present Madhurampur, Post- Akorhi Gola, Police Station- Akorhi Gola, District- Rohtas at Sasaram.

2. Malti Devi Wife of Shyam Kishore Singh Resident of Village- Tirashi Bigha, Post- Kachchidi, Police Station- Karakat, District- Rohtas at Sasaram.

3. Gita Devi Wife of Binod Kumar Singh resident of Village- Siriao Tola, Post- Shrikhanda, Police Station- Nokha, District Rohtas at Sasaram At Present Village- Madhurampur, Post and Police Station - Akorhi Gola, District- Rohtas at Sasaram.

... ... Respondent/s

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Code of Civil Procedure, 1908—Order XXII Rule 12—substitution of legal heirs— learned executing court allowed the substitution petition filed by decree holder/respondents after 31 years—issue before Court was whether the heirs/legal representatives of deceased judgment debtor or decree holder should be brought

within some stipulated time period or substitution can be allowed at length of time— normal principle in a suit that before the decree is passed, the legal representatives are to be brought on record during a particular period is not applicable to the cases of death of decree holder or judgment debtor in execution proceedings—petition dismissed.

(Paras 4, 5 and 7)
(1998) 3 SCC 148; (2020) 11 SCC 598—Relied Upon.

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Versus

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... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ramchandra Singh, Advocate
		Mr. Shankar Kumar, Advocate
		Mr. Jitendra Kumar Singh, Advocate
		Mr. Mahendra Prasad, Advocate
		Mr. Radha Krishna, Advocate
For the Respondent/s	:	None

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
Date : 11-02-2025

Heard learned counsel for the petitioners. No one appears on behalf of the respondents.

2. The petitioners are aggrieved by the order dated 27.04.2017 passed by the learned Sub Judge-IX, Rohtas at Sasaram in Execution Case No. 08 of 1980 whereby and whereunder the application filed by the decree holder/respondents for substituting legal heirs of deceased defendants and plaintiffs has been allowed.

3. Learned counsel for the petitioners submits that the substitution petition was filed on 03.08.2016 and vide impugned order dated 27.04.2017, the learned executing court allowed the same though it was highly time barred. No details of the deceased plaintiffs/defendants about their death and knowledge of their death have been provided. The substitution petition was allowed after 31 years and it was highly belated and would cause serious prejudice to the judgment debtors/petitioners.

4. Issue before this Court lies in narrow compass that whether the heirs/legal representatives of deceased judgment debtor or decree holder should be brought within some stipulated time period or substitution can be allowed at any

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length of time. Order 22 Rule 12 of the Code of Civil Procedure (for short 'the Code') provides nothing in Rules 3, 4 and 8 shall apply to the proceedings in execution of a decree or order. For this reason, there would be no abatement in an execution proceeding which means the practice or the principle applicable in a suit that before the decree is passed that the legal representatives are to be brought on record within a particular period and if they are not brought on record within the said period, the suit would abate. However, the same is not applicable to the cases of death of decree holder or judgment debtor in execution proceedings. If there is no abatement, the execution proceeding would remain on the record of the executing court. If it remains pending and no time limit is prescribed to bring legal representatives on record in execution proceedings, the legal representatives of the decree holder can come on record at any point of time. Moreover, the execution application could not be dismissed for default behind the back of the decree holder's legal representatives. Similarly, in case of death of a judgment debtor, the decree holder could file an application to bring the legal representatives of judgment debtor on record at any time.

5. The decision of Hon'ble Supreme Court in the case

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of *V. Uthirapathi vs. Ashrab Ali & Ors*., reported in *(1998) 3 SCC 148* could be advantageously referred in this regard wherein the Hon'ble Supreme Court held that normal principle arising in a suit that before the decree is passed, the legal representatives are to be brought on record during a particular period is not applicable to the cases of death of decree holder or judgment debtor in execution proceedings. *V. Uthirapathi* (supra) was referred by the Hon'ble Supreme Court in the case of *Varadarajan vs. Kanakavalli & Ors.*, reported in *(2020) 11 SCC 598*, paragraph no.8 of which reads as under:-

> *"8. We may state that Order XXII of the Code is applicable to the pending proceedings in a suit. But the conflicting claims of legal representatives can be decided in execution proceedings in view of the principles of Rule 5 of Order XXII. This Court in a judgment reported as V. Uthirapathi v. Ashrab & Ors. held that the normal principle arising in a suit-before the decree is passed-that the legal representatives are to be brought on record within a particular period is not applicable to cases of death of the decree-holder or the judgment-debtor in execution proceedings. This Court held as under:-*
>
> > *"11. Order 22 Rule 12 of the Code of Civil Procedure reads as follows:*
> >
> > *"Order 22 Rule 12: Application of order to proceedings.-Nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.'*

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12. In other words, the normal principle arising in a suit-before the decree is passed-that the legal representatives are to be brought on record within a particular period and if not, the suit could abate,-is not applicable to cases of death of the decree-holder or the judgment-debtor in execution proceedings.

13. In Venkatachalam Chetti v. Ramaswami Servai [ILR (1932) 55 Mad 352 : AIR 1932 Mad 73 (FB)] a Full Bench of the Madras High Court has held that this rule enacts that the penalty of abatement shall not attach toexecution proceedings. Mulla's Commentary on CPC [(Vol. 3) p. 2085 (15th Edn., 1997)] refers to a large number of judgments of the High Courts and says:

"Rule 12 engrafts an exemption which provides that where a party to an execution proceedings dies during its pendency, provisions as to abatement do not apply. The Rule is, therefore, for the benefit of the decree-holder, for his heirs need not take steps for substitution under Rule 2 but may apply immediately or at any time while the proceeding is pending, to carry on the proceeding or they may file a fresh execution application."

(emphasis supplied)

14. In our opinion, the above statement of law in Mulla's Commentary on CPC, correctly represents the legal position

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relating to the procedure to be adopted by the parties in execution proceedings and as to the powers of the civil court.""

6. In the light of discussion made hereinbefore, I do not find any infirmity in the impugned order dated 27.04.2017 passed by the learned Sub Judge-IX, Rohtas at Sasaram in Execution Case No. 08 of 1980 and, hence, the same is affirmed.

7. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.02.2025
Transmission Date	NA