

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1411 of 2024**

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1. Shashi Shekhar Ojha S/o Late Dadan Ojha R/o Village- Barka Singhanpura, P.S.- Simri, District- Buxar.
  2. Poonam Devi W/o Late Om Prakash Jha R/o- Village- Barka Singhanpura, P.S.- Simri, District- Buxar.
  3. Most. Pushpa Devi W/o Late Sri Ram Ojha R/o Village- Barka Singhanpura, P.S.- Simari, District- Buxar.
  4. Manoj Ojha mother Pushpa Devi, Child of Late Sri Ram Ojha R/o Village- Barka Singhanpura, P.S.- Simari, District- Buxar.
  5. Markandey Ojha S/o Late Dadan Ji Ojha R/o Village- Barka Singhanpura, P.S.- Simari, District- Buxar.
  6. Dhanpal Ojha Son of Late Parasuram Ojha R/o Village- Barka Singhanpura, P.S.- Simri, District- Buxar.
  7. Mintu Pandey W/o Madan Pandey R/o- Village and P.S.- Gonaur, District Gazipur, U.P.
  8. Renu Pandey W/o Kaghna Kant Pandey R/o Village and P.S.- Gonaur, District- Gazipur, U.P.
  9. Sunita Pandey W/o Sunil Pandey R/o Village and P.O.- Kharangazhar, P.S. Telco, District- Jamshedpur.
  10. Sanoj Ojha S/o Late Sri Ram Ojha R/o Village- Barka Singhanpura, P.S.- Simari, District- Buxar.
  11. Savitri Devi W/o Dindayal Ojha R/o Village and P.O.- Barka, Singhanpura, P.S.- Simri, Buxar.
  12. Puja Devi D/o Sri Ram Ojha R/o Village and P.S.- Simari, District- Buxar.
  13. Sanjay Kumar Ojha @ Sanjya Ojha S/o Din Dayal Ojha R/o Village- Barka Singhanpura.
  14. Vijay Kumar Ojha S/o Dindayal Ojha R/o Village- Barka Singhanpura, P.S.- Simri, District- Buxar.
  15. Jangali Ojha S/o Late Baban Ojha R/o Village Barka Singhanpura, and P.S.- Simari, District- Buxar.
  16. Bimla Devi W/o Late Rajgrihi Ojha R/o Village Barka Singhanpura and P.S.- Simari, District- Buxar.
  17. Abhishek Ojha @ Tuntun Ojha S/o Late Rajgrihi Ojha R/o- Village Barka Singhanpura, P.S.- Simari, District- Buxar.
  18. Babul Kumari, D/o Late Rajgrihi Ojha R/o Chotka Singhanpura, P.S.- Simari, Distt.- Buxar.
  19. Nepal Ojha S/o Late Parasuram Ojha R/o Village Barka Singhanpura and P.S.- Simari, District- Buxar.
  20. Chandradeep Ojha S/o Late Baban Ojha R/o Village- Barka Singhanpura, P.S.- Simari, District Buxar.
  21. Siyaram Ojha S/o Late Nand Kishore Ojha R/o Village- Barka Singhanpura,

P.S.- Simri, District- Buxar.

22. Gopal Jee Ojha, Son of Late Parasuram Ojha R/o Village- Barka Singhanpura, P.S.- Simri, District- Buxar.

... .. Petitioners

Versus

1. Pushpa Devi widow of Late Anil Kumar Ojha Resident of Chotka Singhanpura, Rani Singhanpura, P.S. Singhanpura, District- Buxar 802120.
2. Swarangi Dubey Daughter of Late Anil Kumar Ojha and Wife of Sri Rajeev Dubey Resident of 155 Vandana Enclave Khora Colony, Gaziabad, District Gaziabad (U.P.) 201001.
3. Anish Ojha Son of Late Anil Kumar Ojha Resident of 388/7 Upen Banerjee Road, Bahala Flying Club Behala, Parnasree Pally, Kolkata (W.B) 700060.
4. Chandan Kumar Ojha Son of Late Anil Kumar Ojha Resident of Chotka Singhanpura, Rani Singhanpura, P.S. Singhanpura, District Buxar 802120.
5. Mithlesh Ojha S/o Late Shiv Mandir Ojha R/o Chotka Singhanpura, P.S.- Simri, District- Buxar.
6. Nand Kumari Devi W/o Late Kedar Ojha R/o Chotka Singhanpura, P.S.- Simri, District- Buxar.
7. Harendra Ojha (Major) Child of Late Kedar Ojha R/o Chotka Singhanpura, P.S.- Simri, District- Buxar.
8. Nagendra Ojha (Major) Child of Late Kedar Ojha R/o Chotka Singhanpura, P.S.- Simri, District- Buxar.
9. Nirmala Devi (Major) Child of Late Kedar Ojha R/o Chotka Singhanpura, P.S.- Simri, District- Buxar.
10. Meena Devi (Major) Child of Late Kedar Ojha R/o Chotka Singhanpura, P.S.- Simri, District- Buxar.
11. Kamlawati Devi W/o Shiv Kumar Dubey, D/o Shiv Mandir Ojha R/o- Kul Man Fur, P.S.- Murar, District- Buxar.
12. Madhu Devi W/o Anup Choubey, D/o Late Shiv Mandir Ojha R/o Jafali Ganj, Baliya, P.S. Baliya (Town), District- Baliya.
13. Most. Sabitri Devi W/o Late Mithlesh Ojha R/o Barka, Singhanpura, P.S.- Simri, District- Buxar.
14. Manoj Kumar Ojha S/o Late Mithlesh Ojha R/o Barka, Singhanpura, P.S.- Simri, District- Buxar.
15. Sashi Kant Ojha S/o Late Mithlesh Ojha R/o Barka, Singhanpura, P.S.- Simri, District- Buxar.
16. Amrendar Kumar Ojha S/o Late Mithlesh Ojha R/o Barka, Singhanpura, P.S.- Simri, District- Buxar.
17. Saroj Devi D/o Late Mithlesh Ojha, W/o Arun Kumar Upadhaya R/o- Village- Narahi, P.S.- Narahi, District- Baliya, State- U.P.
18. Most. Sunita W/o Late Venkatesh Ojha R/o Barka Singhanpura, P.S.- Simri, District- Buxar.
19. Saltoo Ojha S/o Late Venkatesh Ojha R/o Barka Singhanpura, P.S.- Simri,

District- Buxar.

20. Shiv Nandan Ojha S/o Late Ram Byarh Ojha R/o Barka Sinhganpura, P.S.- Simari, District- Buxar.
21. Gita Devi W/o Late Harinandan Ojha R/o Barka Sinhganpura, P.S.- Simari, District- Buxar.
22. Ram Bihari Ojha S/o Late Jang Ojha R/o Barka Sinhganpura, P.S.- Simari, District- Buxar.
23. Surya Narayan Ojha S/o Late Jang Ojha R/o Barka Sinhganpura, P.S.- Simari, District- Buxar.
24. Hare Narayan Ojha S/o Late Jang Ojha R/o Barka Sinhganpura, P.S.- Simari, District- Buxar.
25. Vidhya Sagar Ojha (Minor) S/o Late Awadh Bihari Ojha R/o Barka Sinhganpura, P.S.- Simari, District- Buxar.
26. Hareram Ojha (Minor) S/o Lal Mohar Ojha R/o Barka Sinhganpura, P.S.- Simari, District- Buxar.
27. Brij Bihari Ojha S/o Dhela Ojha R/o Barka Sinhganpura, P.S.- Simari, District- Buxar.
28. Munna Ojha S/o- Dhela Ojha R/o Barka Sinhganpura, P.S.- Simari, District- Buxar.
29. Swaminath Mishra S/o Khedan Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
30. Kashinath Mishra S/o Khedan Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
31. Hareram Mishra S/o Swaminath Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
32. Jairam Mishra S/o- Swaminath Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
33. Bharath Mishra S/o- Swaminath Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
34. Baccha Mishra S/o- Swaminath Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
35. Laxuman Mishra S/o Kashinath Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
36. Basistha Mishra S/o Ram Ekbal Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
37. Gajadhar Mishra S/o Kanhjee Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
38. Rajgrihi Mishra S/o Jagannath Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
39. Ramgrihi Mishra S/o Jagannath Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
40. Narad Mishra S/o Phagu Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.

41. Sri Bhagwan Mishra S/o Ram Badan Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
42. Bachcha name not known S/o Ram Badan Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
43. Devendra Mishra S/o Surya Badan Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
44. Bachcha name not known Minor S/o Surya Badan Mishra R/o Village Parsaaunda, P.S.- Shahpur, District- Bhojpur.
45. Ramjee Mishra S/o Damari Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
46. Laxman Ojha S/o Damari Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
47. Shivjee Mishra S/o Heera Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
48. Harishikesh Mishra S/o Heera Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.
49. Shiv Prasad Mishra S/o Brija Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.

... .. Respondents

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*Code of Civil Procedure---O.XXII, R. 3, 4, 8, 12---Effect of Death of Parties in Execution Proceeding---petition to challenge impugned order whereby and whereunder learned trial court ordered for deletion of names of deceased-decree holder as well as judgment debtors and bringing on record their legal heirs---argument on behalf of Petitioners that abatement of execution proceeding has taken place as the application for bringing on record legal heirs was not filed during the period of limitation prescribed.*

*Findings: there is no period of limitation prescribed and no abatement of proceeding as Order 22 Rule 3 and 4 do not apply to the execution proceedings---in view of O. 22 R. 12, there would be no abatement of the execution proceeding and as no limitation has been prescribed for substitution of the judgment debtors, they can be brought on record at any stage of proceeding and if any time frame is provided by the learned executing court, within that time frame--- the persons who were sought to be substituted at the stage are not having any concern either with the main contesting judgment debtors/defendants 1<sup>st</sup> set or defendants 2<sup>nd</sup> set and, so, judgment debtors/defendants 1<sup>st</sup> set or defendants 2<sup>nd</sup> set will not be affected---no infirmity in impugned order---petition dismissed. (Para 8-11)*

(2020) 11 SCC 598

.....**Relied Upon.**

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P.S.- Simri, District- Buxar.

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- 49. Shiv Prasad Mishra S/o Brija Mishra R/o Village- Parsaaunda, P.S.- Shahpur, District- Bhojpur.

... .. Respondents

=====

**Appearance :**

For the Petitioner/s	:	Mr. D. K. Sinha, Sr. Advocate Mr. Alexandar Ashok, Advocate
For the Respondent/s	:	Mr. Jitendra Kishore Verma, Advocate Mr. Anjani Kumar, Advocate Mr. Ravi Raj, Advocate Mr. Achyut Kumar, Advocate Ms. Shweta Raj, Advocate Mr. Shreyash Goyal, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**CAV JUDGMENT**

**Date : 09-04-2025**

The present petition has been filed by the petitioners challenging the order dated 02.09.2024 passed by the learned Sub Judge-II, Dumraon, Buxar in Execution Case No. 05 of 2008, whereby and whereunder the learned Sub Judge has ordered for deletion of names of deceased-decree holder as well as judgment debtors and bringing on record their legal heirs and





also allowed correction of some typographical errors.

**02.** Briefly stated, the facts of the case are that one title suit bearing Title Suit No. 53 of 1968 was instituted by the plaintiffs/respondents seeking a decree of redemption of a mortgage bond dated 03.07.1996 executed by one Mahendra Missir in favour of Nandlal Ojha and others upon receipt of a sum of Rs. 2,500/-. The plaintiffs further sought a direction against the defendants to redeem the mortgage and to deliver possession of the mortgaged property, failing which a final decree was sought to be prepared and delivery of possession to be effected in favour of the plaintiffs. Plaintiffs claimed that the mortgaged property was partitioned between the defendants 3<sup>rd</sup> and 4<sup>th</sup> parties. Subsequently, the defendants 3<sup>rd</sup> and 4<sup>th</sup> parties sold 12 *Anna* share of the property to the plaintiffs through three sale deeds dated 24.11.1964. The plaintiffs further submitted that they tendered the mortgage amount, but the defendants refused to accept the same, giving rise to suit filed by the plaintiffs. The defendants in their written statement contended that in 1926, Mahendra Missir executed two mortgage deeds for a total sum of Rs. 5,000/-, one of which pertained to 5.88 acres for Rs. 2,500/-. It was agreed at the time of mortgage that both deeds would be redeemed simultaneously. The defendants 4<sup>th</sup>



party continued to cultivate the entire 11.26 acres of land and used to settle account with the defendants-2<sup>nd</sup> party. The partition story of the plaintiffs was denied by the defendants as false. The defendants further asserted that Ramshakal Mishra and others never came into possession of the property as alleged by the plaintiffs and the vendors of the plaintiffs had no legal right to sell Mahendra Missir's property. It was also contended that Mahendra Missir had executed a registered Will on 19.10.1940, bequeathing all his properties described in Schedules-I, II and III of the plaint to defendant-Baleshwar Mishra. Upon Mahendra Missir's demise, Baleshwar Mishra inherited his property by virtue of this will, which was duly probated by the court on 29.05.1965. Thereafter, Baleshwar Mishra executed an agreement to sell for entire 11.26 acres to the defendants under a registered agreement to sale. The defendants further contended that the right to redeem the mortgage was lost due to the statutory limitation period, as no steps were taken by the plaintiffs to redeem the mortgage within the prescribed time. They contended that the sale deeds relied upon by the plaintiffs were illegal, forged, without consideration and were executed by individuals without any valid title and thus were void in the eyes of law. Therefore, the plaintiffs had



no equity of redemption, nor was there any relationship of mortgagor and mortgagee. The said Title Suit No. 53 of 1968 was dismissed vide judgment and decree dated 21.09.1987. Aggrieved by the dismissal, the plaintiffs/respondents filed Title Appeal No. 147 of 1987 before the learned District Judge, Buxar, challenging the judgment and decree dated 21.09.1987 passed in Title Suit No. 53 of 1968. The Title Appeal No. 147 of 1987 was allowed by a judgment dated 25.08.2000, wherein the trial court's judgment and decree were reversed. Against the said appellate judgment, the defendants preferred Second Appeal No. 400 of 2000, which is still pending. It further transpires that during the pendency of Second Appeal No. 400 of 2000, the respondents attempted to negotiate the sale of the suit land and I.A. No. 2134 of 2001 under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short 'the Code') was filed and this Court directed for maintenance of *status quo*. During the pendency of the said Second Appeal, the plaintiffs-responses moved an application for the preparation of a final decree, which was allowed by the trial court vide order dated 25.07.2008 passed in Title Suit No. 53 of 1968 and a final decree was prepared. Aggrieved by the preparation of the final decree, the defendant-petitioners filed Title Appeal No. 44 of



2008 before the learned appellate court. However, the said appeal was dismissed for default and an application for restoration of the same is pending. In the meantime, the plaintiffs/respondents instituted Execution Case No. 05 of 2008 for the execution of the judgment and decree dated 25.08.2000 before the court of the learned Sub-Judge-II, Dumraon, Buxar. The final decree in Suit No. 53 of 1968 was passed on 12.08.2008, in which names of multiple individuals were included, some of whom were listed as minors. The decree holders through an application dated 30.05.2024 sought to amend the execution list by substituting certain names, however the said application was rejected vide order dated 01.08.2024, passed by learned Sub Judge II, Dumraon, Buxar. Thereafter, the decree holder, through an application dated 14.08.2024, sought to amend the execution list by substituting certain names, including minors with other individuals. This application was allowed vide order dated 02.09.2024 and the same is under challenge before this Court.

**03.** Learned senior counsel appearing on behalf of the petitioners submitted that the decree holders/plaintiffs /respondents earlier filed an application dated 30.05.2024 under Order 22 Rule-4 read with Section 151 of the Code for deletion



of names of some judgment debtors, which was dismissed by the learned executing court vide order dated 01.08.2024. No liberty was sought or granted for filing of another application. Learned senior counsel further submitted that impugned order is unjust as it goes beyond the scope of the decree passed by the court and violates settled legal principles governing the execution of decrees. The decree had attained finality and any alteration in the decree at this stage would amount to a modification of the judgment that is binding and executable. The learned executing court permitted the substitution of heirs for certain judgment debtors, even though the legal heirs had either already been represented in the original suit or had been deliberately excluded and the learned executing court failed to appreciate that such amendments at the stage of execution are impermissible under the law. Learned senior counsel further submitted that the learned Sub Judge, in passing the impugned order, has exceeded the jurisdiction of an executing court and allowed the amendment altering the decree itself. Any modification in the decree cannot be allowed, but the learned executing court allowed the same and hence, the impugned order is bad, inoperative and not sustainable in the eyes of law.

**04.** In support of his submission, learned senior



counsel referred to a decision of Hon'ble Supreme Court in the case of *T. Gnanavel Vs. T.S. Kanagraj & Anr.*, reported in *AIR 2009 SC 2367* on the point that the decree passed by the trial court was a nullity in the eye of law as the defendant died during the pendency of the suit and no exemption was sought at the instance of the plaintiff to bring on record the heirs/legal representatives of the defendant before the judgment was pronounced. Learned senior counsel further submitted that the learned executing court did not take into consideration the aspect of limitation and abatement taking place. Thus, the learned senior counsel submitted that the impugned order is not sustainable and the same needs to be set aside.

**05.** Learned counsel appearing on behalf of plaintiffs/respondents, at the outset, submitted that there could be no application of the laws of limitation in execution cases and referred to the decision of Hon'ble Supreme Court in the case of *V. Uthirapathi Vs. Ashrab Ali & Ors.*, reported in *(1998) 3 SCC 148*, wherein the Hon'ble Supreme Court held that if death of decree holder or judgment debtor takes place during pendency of the execution proceedings, no time limit is prescribed for bringing on record the legal representative of the deceased and they could be brought on record at any time and



the execution proceeding would not abate but will remain pending. Learned counsel further submitted that Order 22 Rule-12 of the Code makes it amply clear that Rules 3, 4 and 8 of Order 22 of the Code shall not apply to proceedings in execution of the decree or order. Thus, the learned counsel submitted that even in the case of death or absence of the decree holder, the execution proceedings cannot be dismissed in default. Learned counsel further submitted that the petitioners have been trying to linger on the matter as the petitioners would not be affected in any manner, since the persons being sought to be substituted belong to the family of the mortgagors and are not the family members of the mortgagee. Recounting the chronology of events, learned counsel further submitted that petitioners represent the defendants 1<sup>st</sup> set/judgment debtors. By the impugned order dated 02.09.2024, the learned executing has ordered for deletion and/or substitution of some of the deceased decree holders and judgment debtors and substitution of their legal heirs as also for correcting some typographical errors and minor's status of some of the parties who have attained majority wherever required for effective adjudication and disposal of the execution case. The learned counsel stressed that in so far as main contesting judgment debtors/defendant 1<sup>st</sup> set are



concerned, they are not going to be affected in any manner by the impugned order and they have got no *locus standi* to approach this Court in the present civil miscellaneous petition as they are not affected parties. Learned counsel further submitted that the execution case arises out of a redemption suit filed for redeeming two mortgage deeds executed by one Mahendra Missir in favour of Nandlal Ojha and others vide mortgage deeds dated 03.07.1926. The plaintiffs of the suit claimed to have purchased major part of the mortgagor's interest and filed the present suit for redemption wherein there were five sets of defendants out of which defendants 1<sup>st</sup> and 2<sup>nd</sup> sets represented mortgagees' interest whereas defendants 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> sets represented original mortgagor's interest and the suit was numbered as Title Suit No. 53 of 1968. The defendants 1<sup>st</sup> set contested the suit and the said title suit was dismissed on 21.09.1987. The Title Appeal filed by the plaintiffs/respondents bearing No. 147 of 1987 against the judgment and decree of Title Suit No. 53 of 1968 was allowed on 25.08.2000 and preliminary decree was passed. Aggrieved by the said judgment and decree, the defendants 1<sup>st</sup> set and others filed Second Appeal No. 400 of 2000, which is still pending adjudication before this Court. In the Title Suit No. 53 of 1968, final decree was





prepared on 12.08.2008 and for execution of the same, Execution Case No. 05 of 2008 has been filed and is still pending. In the said Second Appeal, an application for injunction under Order 39, Rule 1 & 2 of the Code was filed and an order for maintaining *status quo* over the suit property has been passed and the proceeding before the learned subordinate court was not stayed and this fact was subsequently made clear by this Court in second appeal itself. So, the orders passed in second appeal do not restrain the executing court from proceeding and there is no order of stay of execution proceeding by this Court. The present petitioners had earlier filed a petition under Section 47 of the Code on 21.05.2011 objecting to the executability of the decree and praying for stay of the further proceeding of execution case. But the said application was rejected vide order dated 03.09.2016 and the said order became final as it remained unchallenged. Learned counsel further submitted that further development took place in Title Appeal No. 44 of 2008 and in the second appeal whereby the Title Appeal No. 44 of 2008 was dismissed in default and the application filed by the petitioners seeking stay of the execution proceeding has been dismissed as withdrawn.

**06.** Learned counsel for the plaintiffs/respondents



further submitted that prior to filing of application dated 14.08.2024, the decree holders/plaintiffs/respondents filed a petition on 30.05.2024 for deleting the names of judgment debtor nos. 33, 34, 44, 55 and 64, but the learned executing court rejected the petition vide order dated 01.08.2024 saying that the names cannot be deleted as no substitution petition has been filed in this respect and thereupon, the decree holders filed petition dated 14.08.2024, seeking substitution etc. Upon which the impugned order dated 02.09.2024 has been passed and there is no question of *res judicata* being applicable in the present facts and circumstances. Learned counsel reiterated that there is no substitution in so far as main contesting judgment debtors/defendants 1<sup>st</sup> set are concerned and even in respect of defendants 2<sup>nd</sup> set as it relates to judgment debtor nos. 33, 34, 44, 55 and 64, who are related to defendants 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> sets who have not contested the suit and as such, the petitioners/defendants 1<sup>st</sup> set or even the other mortgagee judgment debtors/defendants 2<sup>nd</sup> set are not going to be affected in any manner. Learned counsel further submitted that the petitioners earlier approached this Court by filing Civil Misc. Jurisdiction No. 840 of 2023, which was dismissed as withdrawn. But, while allowing the withdrawal, this Court



directed the learned Sub Judge-III, Dumraon, Buxar to dispose of the Execution Case No. 05 of 2008 expeditiously and preferably within a period of six months in the light of decision of Hon'ble Supreme Court in the case of ***Rahul S Shah Vs. Jinendra Kumar Gandhi & Ors.***, reported in ***(2021) 6 SCC 418***. But, the judgment debtors/petitioners have left no stone unturned in ensuring that delivery of possession is not effected, inasmuch as, they have filed a number of petitions to obstruct the delivery of possession and even created hindrance in delivery of possession by assembling a number of persons/musclemen. Learned counsel further submitted that if the petitioners are allowed to play with the process of the Court, the respondents/decree holders would never get the fruit of the decree, which arises of a suit of the year 1968 seeking redemption of mortgage of the year 1926. Thus, the learned counsel submitted that there is no infirmity in the impugned order and the same does not need any interference.

**07.** I have given by thoughtful consideration to the rival submission of the parties and perused the record.

**08.** So far as contention of learned senior counsel about the decree being nullity on account of death of defendant during the pendency of the suit is concerned, the petitioners



have earlier objected to the executability of decree and the prayer was rejected vide order dated 03.09.2016 and the said order attained finality. Therefore, the petitioners are not allowed to rake up the issue of executability of decree at this stage.

However, the thrust of argument of learned senior counsel for the petitioners is mainly about abatement taking place and the application not being filed during the period of limitation prescribed, if some of the decree holders and judgment debtors have not been brought on record within stipulated time. This argument is completely devoid of merit as it is against the specific provision of law. Order XXII Rule-12 of the Code is the relevant provision, which reads as under:

***“12. Application of Order to proceedings.—Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.”***

**09.** The aforesaid provision makes it amply clear that there is no period of limitation prescribed and no abatement of proceeding as Order 22 Rule 3 and 4 do not apply to the execution proceedings. The Hon’ble Supreme Court in the case of ***Varadarajan Vs. Kanakvalli & Ors.***, reported in ***(2020) 11 SCC 598*** made the position clear and Paragraph-8 of the said decision is extracted for reference:



*“8. We may state that Order 22 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 22. This Court in a judgment in V. Uthirapathi v. Ashrab Ali [V. Uthirapathi v. Ashrab Ali, (1998) 3 SCC 148] 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: (SCC p. 153, paras 11-14)*

*“11. Order 22 Rule 12 of the Code of Civil Procedure reads as follows:*

*‘12. Application of order to proceedings.—Nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.’*

*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. Ramaswamy Servai [Venkatachalam Chetti v. Ramaswamy Servai, 1931 SCC OnLine Mad 149 : ILR (1932) 55 Mad 352 : AIR 1932 Mad 73] a Full Bench of the Madras High Court has*



*held that this rule enacts that the penalty of abatement shall not attach to execution 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 proceeding 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.'*

*14. In our opinion, the above statement of law in Mulla's Commentary on CPC, correctly represents the legal position relating to the procedure to be adopted by the parties in execution proceedings and as to the powers of the civil court."*

**10.** Therefore, submission on this point would not cut much ice. If there could be no application of Order XXII Rules 3, 4 and 8 of the Code, an application filed under Order XXII Rule 4 would not act as *res judicata* for filing subsequent application for substitution of deceased judgment debtors. Moreover, the earlier application was filed only for deleting the names of respondent nos. 33, 34, 44, 55 and 64 whereas the subsequent application has been filed for substitution of the



judgment debtors.

**11.** Thus, in view of the specific provision of law, there would be no abatement of the execution proceeding and as no limitation has been prescribed for substitution of the judgment debtors, they can be brought on record at any stage of proceeding and if any time frame is provided by the learned executing court, within that time frame. On the basis of the principles adopted herein before, the impugned order could not be faulted. Further, the persons who were sought to be substituted at the stage are not having any concern either with the main contesting judgment debtors/defendants 1<sup>st</sup> set or defendants 2<sup>nd</sup> set, I fail to understand how the judgment debtors/defendants 1<sup>st</sup> set or defendants 2<sup>nd</sup> set are going to be affected. If there is no illegality in the impugned order, the petitioners being contesting judgment debtors, who are not affected by the substitution order could not maintain a challenge to the impugned order.

**12.** In the light of discussion made here-in-before, I do not find any error of jurisdiction by the learned executing court or any infirmity in the impugned order and hence, the impugned order dated 02.09.2024 passed by the learned Sub Judge-II, Dumraon, Buxar in Execution Case No. 05 of 2008 is hereby



affirmed.

**13.** Accordingly, the present petition stands dismissed.

**14.** Pending applications, if any, stands disposed of.

**(Arun Kumar Jha, J)**

Ashish/-

AFR/NAFR	AFR
CAV DATE	29.01.2025
Uploading Date	09.04.2025
Transmission Date	NA

