

# Order 22 CPC- Death, Marriage and Insolvency of Parties

**-Meenakshi Sharma  
Civil Judge, Purola**



# Rule 1

## No abatement by parties death if the right to sue survives-

The death of the plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

# Rule 2

Procedure where one of the several plaintiffs or defendants dies and right to sue survives-

where-

- There are more plaintiffs or defendants than one
- And any of them dies
- Where the right to sue survives to the surviving plaintiffs or against the surviving defendants

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-- the court-

- Shall cause an entry to that effect to be made on the record
- And the suit shall proceed at the instance of the surviving plaintiff or plaintiffs or against the surviving defendant or defendants.

## Rule 3 – procedure in case of death of one of several plaintiffs or sole plaintiff

(1) Where-

- One of two or more plaintiffs dies
- 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 party and proceed with the suit.

(2) where-

- Within the time stipulated by law
- No application is made under sub rule (1)
- The suit shall abate so far as the deceased plaintiff is concerned.
- Costs to the defendant on an application made in this behalf.

## Rule 4 – procedure in case of death of one of several defendants or sole defendant

(1) Where-

- One of two or more defendants dies and the right to sue does not survive against the surviving defendant
  - Or a sole defendant or sole surviving defendant dies
  - And the right to sue survives
- the court-
- On an application made in that behalf
  - Shall cause the legal representative of the deceased defendant to be made party and proceed with the suit.

(3) where-

- Within the time stipulated by law
- No application is made under sub rule (1)
- The suit shall abate as against the deceased defendant.



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

(5) where-

(a) the plaintiff was ignorant of the death of the defendant

- And could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule
- Within the period specified in the Limitation Act. 1963
- And the suit in consequence has abated

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963

- For setting aside the abatement
- And application u/s 5 Limitation act, 1963
- On the ground that he had, by reason of such ignorance, sufficient cause for not making that application within time
- The court shall in considering the application u/s 5, have due regard to the fact of such ignorance.

# 4A- procedure where there is no LR

If in any suit, it shall appear to the court that any party who has died during the pendency of the suit has no legal representative,

The Court may-

- On the application of any party to the suit
- Proceed in absence of a person representing the estate of the deceased person, or
- May by order appoint the administrator general, or an officer of the court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit.....

.....and any judgment or Order subsequently made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court-

(a) may require notice of the application for the order to be given to such(if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.

# Rule 5- Determination of question as to LR

Where-

- A question arises as to whether any person is or is not the LR of a deceased plaintiff or a deceased defendant,
- Such question shall be determined by the court.

Provided that-

- where such question arises before an appellate court, the court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any recorded at such trial, its findings and reasons therefor, and the Appellate Court may take same into consideration in determining the question.



## Rule 6- No abatement by reason of death after hearing

Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

## Rule 9 – Effect of abatement or dismissal

(1) Where a suit abates or is dismissed under this order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the LR of the deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 the Limitation Act, 1963 shall apply to applications under sub rule (2).

Explanation-nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.

## Rule 10- Procedure in case of an assignment before final order in the suit

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment of the benefit of sub rule (1).

## Rule 10A- Duty of a pleader to communicate to court death of a party.

Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the court about it, and the Court shall thereupon give notice of such death, to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.

# Rule 11- Application of Order to appeals

In the application of this Order to appeals, so far as may be, the word “plaintiff” shall be held to include an appellant, the word “defendant” a respondent, and the word “suit” an appeal.

## Rule 12- Application of Order to proceedings

Nothing in Rule 3, 4 and 8 shall apply to proceedings in execution of a decree or Order.

# Case laws

## Varadarajan vs Kanakavalli AIR 2020 SC 720

- The jurisdiction to determine who is a legal heir is summary in nature. Such determination will not confer any rights to the legal representative, as regards to any other claim, as to the estate of the deceased.



## Jaladi Suguna vs Satya Sai Central Trust (2008) 8 SCC 521

- The determination as to who is the LR U/O-22, R-5 will ofcourse be for the limited purpose of representation of the estate of the deceased, for adjudication of that case. Such determination for such limited purpose will not confer on the person held to be the LR, any right to the property which is the subject matter of the suit.

## V. Uthirapati vs Ashrab (1998) 3 SCC 148

- It is held that abatement does not apply to execution proceedings.
- “In other words, the normal principle arising in a suit- before the decree is passed- that the LR are to be brought on record within a particular period and if not, the suit could abate, - is not applicable to the cases of death of the decree-holder or the JD in execution proceedings.”

# Is abatement of suit automatic or requires an order from the Court

## Churya vs Baneshwar AIR 1926 All 217

- It seems clear in every way that abatement in the case of a suit or appeal is an automatic proceeding and that for the purpose of producing what is described as the condition of abatement, no order of the court is necessary.
- It does indeed happen in practice that Court do declare that a suit or appeal has abated, but in making this declaration they are merely recording a fact which has happened in the law and abatement does not result in any way from the making of the order.

**Thank you!**