



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Civil First Appeal No. 636/2026
CNR: RJHC010663252026
URN: CFA / 1688U / 2026

Kalu Ram S/o Sh Noja Ram, Aged About 55 Years, R/o Village Indroka Ki Dhani, Tehsil Rohat, District Pali Raj.

-----Appellant

Versus

1. Khiyan Ram S/o Late Sh Lala Ram, R/o Village Indroka Ki Dhani, Tehsil Rohat, District Pali
2. Prakash Chandra S/o Late Sh Lala Ram, R/o Village Indroka Ki Dhani, Tehsil Rohat, District Pali
3. Sugni Devi W/o Late Sh Lala Ram, R/o Village Indroka Ki Dhani, Tehsil Rohat, District Pali
4. Santok D/o Late Sh. Lala Ram, W/o Sohan Lal, R/o Village Lundawas, Tehsil Sojat, District Pali (Raj)

-----Respondents

For Appellant(s) : Mr. Narpat Singh
Mr. Om Singh Chauhan
For Respondent(s) : Ms. Sapna Vaishnav

HON'BLE MR. JUSTICE FARJAND ALI

Judgment

REPORTABLE

13/07/2026

1. The present civil appeal has been preferred under Section 96 read with Order XLI Rule 1 CPC assailing the judgment and decree dated 30.04.2025 passed by the learned Additional District Judge, Pali in Civil Original Suit No.196/2015 (166/2013) (CIS No.1326/2014), whereby the suit instituted by the original plaintiff came to be decreed ex parte against the present appellant.



2. The appeal is barred by limitation from 345 days. An application under Section 5 of the Limitation Act has also been filed seeking condonation of delay in preferring the appeal.

3. Learned counsel for the appellant submitted that the appellant acquired knowledge of the impugned judgment and decree only when execution proceedings came to be initiated pursuant thereto. Immediately thereafter, certified copies were applied for and, without any avoidable delay, the present appeal came to be instituted. It is submitted that the delay was neither deliberate nor intentional and, having regard to the nature of the challenge laid to the impugned judgment and decree, the same deserves to be condoned in the interest of justice.

4. Having considered the explanation furnished in the application and the submissions advanced at the Bar, this Court is satisfied that sufficient cause has been shown for not preferring the appeal within the prescribed period. Since the appellant seeks to challenge the very legality of the proceedings culminating in the impugned judgment and decree, the delay deserves to be condoned. Accordingly, the application under Section 5 of the Limitation Act is allowed. The delay in filing the appeal stands condoned.

5. With the consent of learned counsel appearing for the parties, the appeal itself was heard finally.

6. Learned counsel for the appellant submitted that the impugned judgment and decree are wholly unsustainable in law as the sole plaintiff, namely, Lala Ram, expired on 26.05.2023, nearly





two years prior to the passing of the impugned judgment and decree dated 30.04.2025. It is submitted that despite the death of the sole plaintiff, no application seeking substitution of his legal representatives was filed within the prescribed period. Equally, no application seeking condonation of delay or setting aside of the abatement was ever preferred before the learned trial Court. Consequently, the suit stood abated by operation of law and, in the absence of any order reviving the proceedings, the learned trial Court lacked the jurisdiction to proceed further with the suit and pronounce the impugned judgment and decree.

7. Learned counsel further submitted that despite the aforesaid legal position, the persons claiming themselves to be the legal representatives of the deceased plaintiff proceeded to institute execution proceedings on the strength of the impugned decree. It is contended that once the suit had already abated and the legal representatives had neither been brought on record nor the abatement set aside in accordance with law, they could not have maintained the execution proceedings founded upon such decree.

8. Per contra, Ms. Sapna Vaishnav, learned counsel appearing on behalf of the respondents, who claim to be the legal representatives of the deceased plaintiff, fairly does not dispute that the original plaintiff expired on 26.05.2023, much before the impugned judgment and decree came to be passed. Learned counsel also does not dispute that no application seeking substitution of the legal representatives within the prescribed period, no application seeking condonation of delay and no



application for setting aside of the abatement was ever filed before the learned trial Court. It is further not disputed that no judicial order bringing the legal representatives on record came to be passed prior to the pronouncement of the impugned judgment and decree.

9. In view of the aforesaid admitted factual position, the controversy before this Court lies within a narrow compass. The foundational facts giving rise to the present appeal are not in dispute and, therefore, no useful purpose would be served by summoning the original record of the learned trial Court merely to verify facts which stand fairly admitted by the learned counsel appearing for the respondents. The appeal, therefore, is liable to be decided on the legal consequences flowing from the admitted facts.

10. The short but significant question that arises for consideration is whether, after the death of the sole plaintiff and the consequent deemed abatement of the suit by operation of law, the learned trial Court could have proceeded to pronounce the impugned judgment and decree in the absence of any order setting aside the abatement and bringing the legal representatives on record, and whether the execution proceedings thereafter instituted by the legal representatives can be sustained in law.

11. Before advertng to the rival submissions, it would be apposite to notice the statutory scheme embodied in Order XXII of the Code of Civil Procedure.



12. Order XXII CPC regulates the procedure to be followed in the event of the death, marriage or insolvency of parties to a suit. Rule 1 embodies the well-settled principle that the death of a party does not, by itself, result in the abatement of the suit where the right to sue survives. However, where the sole plaintiff dies and the right to sue survives, Rule 3 contemplates an application for bringing the legal representatives of the deceased plaintiff on record within the period prescribed by law, so that the proceedings may continue in accordance with law.

13. The consequence of failure to make an application under Rule 3 within the prescribed period is expressly provided by the Code itself. Upon expiry of the prescribed period without such an application, the suit abates by operation of law. Such abatement is a statutory consequence and does not depend upon the passing of a formal judicial order recording the same. Any order recording the abatement is merely declaratory of a legal consequence that has already ensued by operation of law.

14. The Code, however, also provides a remedy against such abatement. Rule 9 of Order XXII enables the legal representatives to seek setting aside of the abatement by showing sufficient cause for not making the application within the prescribed period. Where such an application is itself filed beyond the period of limitation, it must be accompanied by an application under Section 5 of the Limitation Act seeking condonation of delay. It is only upon the Court being satisfied that sufficient cause exists, condoning the delay, setting aside the abatement and thereafter bringing the



legal representatives on record that the suit stands revived and proceeds in accordance with law.

15. Thus, where the sole plaintiff dies and the right to sue survives, the Code envisages substitution of the legal representatives within the prescribed period. Upon failure to do so, the suit abates. Thereafter, unless the delay, if any, is condoned, the abatement is set aside and the legal representatives are brought on record, the suit cannot proceed further. It is only thereafter that the Court becomes competent to continue with the adjudication of the suit.

16. Tested on the touchstone of the aforesaid statutory scheme, the facts of the present case are not in dispute. It stands fairly admitted before this Court that the sole plaintiff, Lala Ram, expired on 26.05.2023, almost two years prior to the passing of the impugned judgment and decree dated 30.04.2025. It is equally undisputed that no application seeking substitution of his legal representatives was filed within the prescribed period. It is further admitted that no application under Section 5 of the Limitation Act seeking condonation of delay and no application under Order XXII Rule 9 CPC seeking setting aside of the abatement was ever filed before the learned trial Court. Admittedly, no judicial order bringing the legal representatives on record also came to be passed.

17. At the outset, it deserves to be noticed that the legal representatives could not have assumed the status of parties to the suit merely by virtue of the death of the sole plaintiff. Their



substitution was required to be effected only upon an order of the competent Court allowing an application for bringing them on record. In the absence of such substitution, they never acquired the status of plaintiffs, nor could any decree have been validly passed in their favour. The impugned decree itself, having been rendered after the death of the sole plaintiff in a suit which had already stood abated by operation of law, is a nullity in the eyes of law and incapable of creating or conferring any legal right upon any person. That apart, even the execution proceedings initiated by the applicants are ex facie unsustainable. Under the scheme of the Code of Civil Procedure, an execution petition can be maintained only by a "decree-holder", i.e., a person in whose favour a decree has been passed or who has otherwise become entitled to execute the decree in accordance with law. The applicants do not answer this description. Having never been brought on record as legal representatives of the deceased sole plaintiff during the pendency of the suit, they never acquired the status of plaintiffs, and consequently no decree can be said to have been passed in their favour. Unless and until they had been lawfully substituted in the suit and a decree had thereafter been passed in their favour, they could not have assumed the character of decree-holders so as to invoke the execution jurisdiction of the Court. Viewed thus, the very institution and continuation of the execution proceedings at the instance of the applicants is without the sanction of law and suffers from a foundational jurisdictional defect.





18. The aforesaid facts unmistakably lead to one legal consequence. Upon expiry of the prescribed period for substitution, the suit stood abated. In the absence of any order setting aside the abatement, the proceedings never stood revived. Consequently, the learned trial Court could not have proceeded with the suit as though it remained pending and capable of adjudication. The impugned judgment and decree, having been rendered a nullity after the suit had abated and thus, without revival of the proceedings in accordance with Order XXII CPC, cannot be sustained.

19. The execution proceedings instituted by the persons claiming themselves to be the legal representatives of the deceased plaintiff are equally unsustainable. Unless the statutory abatement had first been set aside and substitution of party is made as per law, and the proceedings revived in accordance with law, the legal representatives could neither have prosecuted the suit legally nor permitted to seek enforcement of the decree purportedly passed therein. Consequently, the execution proceedings initiated pursuant thereto, being merely consequential to the impugned judgment and decree, cannot survive.

20. Thus, it is concluded that, once the suit had stood abated by operation of law and such abatement was never set aside in accordance with Order XXII CPC, there remained no subsisting proceedings before the learned trial Court. Consequently, the judgment and decree dated 30.04.2025, passed after the statutory abatement of the suit, are a nullity and *non est* in the



eye of law. It is well settled that a decree which is a nullity is incapable of execution. The execution proceedings founded exclusively upon such decree are, therefore, equally unsustainable and cannot be permitted to proceed further.

21. Consequently, the appeal succeeds and is hereby allowed.

The impugned judgment and decree dated 30.04.2025 passed by the learned Additional District Judge, Pali in Civil Original Suit No.196/2015 (166/2013) (CIS No.1326/2014) are hereby set aside. As a necessary consequence, the execution proceedings initiated pursuant thereto shall also stand set aside.

22. It is, however, made clear that this Court has not adjudicated the issues of the case as pleaded by the parties. The legal representatives of the deceased plaintiff shall be at liberty to avail such remedy or remedies as may otherwise be available to them in law, including by moving appropriate application(s) under the provisions of Order XXII CPC and all questions in that regard are left open to be considered by the competent Court strictly in accordance with law.

23. The appeal stands allowed in the aforesaid terms. Pending application(s), if any, also stand disposed of. There shall be no order as to costs.

(FARJAND ALI),J

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