

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

Reserved on: 14.07.2026

Pronounced on: 24.07.2026

Uploaded on: 24.07.2026

*Whether the operative part or full
judgment is pronounced:* **Full**

RSA No.12/2021

c/w

RSA No.11/2021

GULAM AHMAD RAINA & ANR.

...APPELLANTS

*Through: - Mr. Sheikh Hilal, Advocate, with
Ms. Shaziya Kamal, Advocate.*

Vs.

MST. HAMEEDA AKHTAR & ORS.

...RESPONDENT(S)

*Through: - Mr. Altaf Haqani, Sr. Advocate, with
Mr. Asif, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Through the medium of present judgment, the afore-
title two Civil Second Appeals filed by the appellants against
two separate judgments dated 19.05.2021 passed by the
learned Additional District Judge, Budgam (hereinafter "the
1st Appellate Court"), whereby appeals against common
judgment and decree dated 31.05.2016 passed by the
learned Sub Judge, Chadoora (hereinafter "the trial court")
in two different suits filed by the appellants, have been
dismissed.

2) The facts relevant for deciding the present appeals are that suit No.205/N came to be filed by the appellants/plaintiffs before the trial court against the respondents/their predecessor-in-interest (defendants), seeking a declaration that they are owners in possession of land measuring 06 kanals 08 marlas in Khasra No.528 situated at Hassipora, Chadoora, and that the deed of confirmation regarding half of the aforesaid land executed by defendant No.8-Ghulam Mohd. Raina in favour of defendant No.1-Hamida Akther and defendant No.2-Mehmooda on 20.02.1995 registered by Sub-Registrar on 01.03.1995, be declared as null and void and not binding upon the plaintiffs, with a consequential relief of injunction against the defendants.

3) Suit No.54/N was filed by the plaintiffs seeking a declaration that they are in exclusive ownership and possession of land measuring 23 marlas in Khasra No.963/443 and 951/443, situated at village Hassipora Chadoora, with a consequential relief of injunction. In this suit, only Gh. Mohammad Raina, Hameeda Raina and Mehmooda Raina were impleaded as defendants, whereas in the earlier suit, there were as many as eight defendants.

4) The two suits were consolidated by the learned trial court and during trial of the case, the parties arrived at a

settlement, whereby they agreed for appointment of Commissioner with power to make local inspection of the properties including the suit properties, which had devolved upon them through their ancestors as also the properties which had been acquired by them from their collaterals. Accordingly, the learned trial court appointed two Commissioners, namely, Shri Rashid Ahmad Lone (former District and Sessions Judge) and Shri Abdul Rashid Hanjura (Advocate), as Commissioners for the purpose as indicated in the compromise application. Naib Tehsildar, Chadoora, was directed to provide assistance to the Commissioners for the purpose of identification, measurement and entitlement of the parties in respect of entire property. The Commissioners were directed to submit their report. The parties undertook that the report of the Commissioners shall be binding upon them.

5) It seems that the Commissioners, after undertaking inspection of the entire property that had devolved upon the parties from their ancestors, submitted their report on 13.06.2013. The plaintiffs, however, did not accept the report of the Commissioners and they filed their objections to the same. On the directions of the Court, the matter was sent for re-consideration to the Commissioners. Another report came to be filed by the Commissioners on 04.08.2014.

However, the plaintiffs/appellants again filed their objections to the said report. The learned trial court recorded the statements of the Commissioners.

6) After taking into consideration the pleadings, the reports filed by the Commissioners, the objections/counter-objections filed by the parties to the reports of the Commissioners and the statements made by the Commissioners before the trial court, the learned trial court passed a common judgment dated 31.05.2016. The relevant findings recorded by the learned trial court are reproduced as under:

“Although commissioners reports have been objected by the plaintiffs but after minutely scrutinizing the commissioners reports as well as the record which has been annexed with the commissioners reports, I am of the opinion that commissioner reports has left no stone unturned in clarifying the doubts/objections raised by the plaintiffs. Be that as it may, although in the basic suits, suit property only pertains to survey No.528-min, Survey No. 963/443 and Survey No. 951/443 but compromise filed by the parties to the suit is having a wider scope to bring within its purview the whole landed estate that once upon a time belonged to the common hereditary ascendant of the parties to the suit namely Fazal Raina father of Abli and Abdi Raina all dead by getting represented by third and fourth generation of Fazal Raina i.e, parties to the suit.

Since in the present case parties have crystallized their rights regarding their inheritance pertaining to the estate of their common ancestor namely Fazal Raina by way of compromise and since none of the parties to the

suit does retract from their compromise on record referred to the commissioners for settlement, this court has no option but to pass a decree of declaration that whatever landed estate had been left by Quda Raina son of Abdi Raina son of Fazal Raina along with two-third landed estate of Aziz Raina son of Abli Raina son of Fazal Raina shall vest in the plaintiffs through Rahim & Rehman both sons of Aziz Raina and defendant No. 1 Hamida and defendant No.2 Mehmooda both daughters of Gh. Mohd. Raina and defendant No.8 Gh. Mohd. Raina shall be the owner possessor and title holder of whole landed estate of Ahad Raina son of Abli son of Fazal Raina along with one-third share from the landed estate of Aziz Raina son of Abli Raina son of Fazal Raina. With a clarification that all that has been disposed off during his lifetime in different manners of disposition, alienation and conveyance by Quda Raina son of Abdi Raina son of Fazal Raina shall not be accounted for entitlement to the plaintiffs. Similarly if Ahad So Abli son of Fazal Raina has transferred any of the properties during his lifetime shall not be accounted for the entitlement of the defendants. With further clarification that if Aziz father of defendant Dr. Gh. Mohd. Raina and grandfather of plaintiffs has transferred during his lifetime any of the properties out of his holdings same shall not be considered for the entitlement of the parties. Concerned officials are directed to ensure that declaration above mentioned is implemented in its letter and spirit in terms of commissioners' report read with detailed report furnished by revenue officials who assisted the commissioners in preparing the report. With a further direction to both the parties that party found in excess shall surrender the same unto and in favour of party holding the less. Decree sheet shall be prepared accordingly. Both the suits are disposed off. File shall be consigned to records after its due compilation."

7) The aforesaid common judgment and decree passed by the learned trial court was challenged by the plaintiffs/appellants before the learned 1st Appellate Court by filing two

separate appeals. Both the appeals came to be dismissed vide two separate judgments passed on 19.05.2021. The appellants thereafter have challenged the judgments and decrees passed by the courts below by filing instant two separate civil second appeals, which are subject matter of the present judgment. The two appeals, however, came to be dismissed for non-prosecution in terms of dated 13.10.2023.

8) Vide CM No.7027/2023, appellant No.1, Gulam Ahmad Raina, sought restoration of RSA No.11/2021 and vide CM No.7027/2023, he sought restoration of RSA No.12/2021. The restoration of the appeals was sought by appellant No.1 only, without being joined by the legal heirs of deceased appellant No.2, who had passed away prior to dismissal of the appeals. RSA No.11/2021 came to be restored in terms of order dated 17.02.2025 whereas RSA No.12/2021 came to be restored by this Court in terms of order dated 12.02.2025.

9) The respondents/defendants filed two applications bearing CM Nos.3892/2025 and 3891/2025, seeking recall of orders dated 12-02-2025 and 17-02-2025 on the ground that appellant No.2 had already passed away, therefore, the orders whereby appeals have been restored, deserve to be recalled. The said applications came to be disposed of vide

order dated 14.07.2025 by this Court. While declining to recall orders dated 12.02.2025 and 17.02.2025, this Court observed that the effect of death of appellant No.2 on the fate of the appeals would be considered by the Court at an appropriate stage when the applications on behalf of legal heirs of appellant No.2 for their substitution as appellants would be considered.

10) The legal representatives of deceased appellant No.2 filed two applications bearing CM No.2133/2025 and CM No.2136/2025 seeking setting aside of abatement and their substitution as appellants. Both these applications came to be dismissed by this Court in terms of order dated 06.03.2026. While dismissing these applications, this Court left appellant No.1 to be the sole appellant so far as the appeal are concerned, subject to determination of the point as to whether appellant No.1 can pursue the appeals alone, regarding which the respondents/defendants had taken an exception that the appeals have to stand abated in their entirety.

11) I have heard learned counsel appearing for the parties for determination of the question as to whether on account of abatement of the appeals as against appellant No.2, whose legal representatives have not been allowed to be substituted

by this Court in terms of order dated 06.03.2026, the appeals as a whole would abate, or whether appellant No.1 can maintain these appeals despite abatement of the appeals to the extent of appellant No.2. I have also gone through record of the case.

12) Rule 1 of Order XXII of the CPC provides that death of plaintiff or defendant does not cause the suit to abate if the right to sue survives. As per Rule 2 of Order XXII of CPC, where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the suit would proceed at the instance of surviving plaintiffs or plaintiffs or against the surviving defendant or defendants.

13) Rule 3 of Order XXII is significant for the purposes of the present case. The same reads as under:

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.—(1) *Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, 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 a party and shall proceed with the suit.*

(2) *Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which*

he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

14) From a perusal of sub-rule (2) of Rule 3 quoted above., it is clear that if no application is made for bringing on record legal representatives of the deceased plaintiff, within the prescribed period of limitation, the suit would abate so far as the deceased plaintiff is concerned.

15) Rule 11 of Order XXII makes the application of said order to appeals as well. Thus, if one of the several appellants dies during the pendency of the appeal and the right to sue does not survive to the surviving appellant or appellants alone, the appeal as a whole would abate. The question whether or not in the instant case, right to sue survives to appellant No.1 alone, is required to be determined for deciding the issue whether these appeals would abate as a whole or the same have to proceed at the behest of appellant No.1 alone.

16) The issue as in what circumstances a suit or appeal would abate as a whole for non-substitution of legal heirs of a deceased party, has been a matter of discussion and deliberation in several cases decided by the Supreme Court from time to time. In **Sardar Amarjit Singh Kalra (Dead) by LRs and others vs. Pramod Gupta (Smt.) (Dead) by LRs and others**, (2003) 3 SCC 272, the Supreme Court has,

while considering the issue as to when an appeal would abate in its entirety for non-substitution of legal representatives of a deceased party, observed as under:

“21..... (a) In case of "Joint and indivisible decree", "Joint and inseverable or inseparable decree", the abatement of proceedings in relation to one or more of the appellant(s) or respondent(s) on account of omission or lapse and failure to bring on record his or their legal representatives in time would prove fatal to the entire appeal and require to be dismissed in toto, as otherwise inconsistent or contradictory decrees would result and proper reliefs could not be granted, conflicting with the one which had already become final with respect to the same subject matter vis-a-vis the others; (b) the question as to whether the Court can deal with an appeal after it abates against one or the other would depend upon the facts of each case and no exhaustive statement or analysis could be made about all such circumstances wherein it would or would not be possible to proceed with the appeal, despite abatement, partially; (c) existence of a joint right as distinguished from tenancy in common alone is not the criteria but the joint character of the decree, dehors the relationship of the parties inter se and the frame of the appeal, will take colour from the nature of the decree challenged; (d) where the dispute between two groups of parties centred around claims or based on grounds common relating to the respective groups litigating as distinct groups or bodies the issue involved for consideration in such class of cases would be one and indivisible; and (e) when the issues involved in more than one appeals dealt with as group or batch of appeals, which are common and identical in all such cases, abatement of one or the other of the connected appeals due to the death of one or more of the parties and failure to bring on record the legal representatives of the deceased parties, would result in the abatement of all appeals.

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30. The question, therefore, as to when a proceeding before the Court becomes or rendered impossible or possible to be proceeded with, after it had partially abated on account of the death of one or the other party on either side has been always considered to depend upon the fact as to whether the decree obtained is a joint decree or a severable one and that in case of a joint and inseverable decree if the appeal abated against one or the other, the same cannot be proceeded with further for or against the remaining parties as well. If

otherwise, the decree is a joint and several or separable one, being in substance and reality a combination of many decrees, there can be no impediment for the proceedings being proceeded with among or against those remaining parties other than the deceased.....

31. But, in our view also, as to what those circumstances are to be, cannot be exhaustively enumerated and no hard and fast rule for invariable application can be devised. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law, inevitably necessitates it. Consequently, having regard to the nature of the proceedings under the Act and the purpose of reference proceedings and the appeal therefrom, the Courts should adopt a liberal approach in the matter of condonation of the delay as well as the considerations which should weigh in adjudging nature of the decree, i.e., whether it is joint and inseverable or joint and severable or separable. The fact that the Reference Court has chosen to pass a decree jointly in the matters before us is and should be no ground by itself to construe the decree to be joint and inseparable. At times, as in the cases on hand, the Court for its convenience might have combined the claims for joint consideration on account of similar nature of the issues in all such cases and for that reason the parties should not be penalized, for no fault of them. Actus cuius nemi gravabit (an act of Court shall prejudice no one) is the maxim of law, which comes into play in such situations. Number of people, more for the sake of convenience, may be counselled to join together to ventilate, all their separate but similar nature of claims and this also should not result in the claims of all such others being rejected merely because one or the other of such claims by one or more of the parties abated on account of death and consequent omission to bring on record the legal heirs of the deceased party. At times one or the other parties on either side in a litigation involving several claims or more than one, pertaining to their individual rights may settle among themselves the dispute to the extent of their share or proportion of rights are concerned and may drop out of contest, bringing even the proceedings to a conclusion so far as they are concerned. If all such move is allowed to boomerang adversely on the rights of the remaining parties even to contest and have their claims

adjudicated on merits, it would be a travesty of administration of justice itself.

32. The area of differences in the catena of decisions brought to our notice is not so much with reference to the principles to be applied to different nature of decrees but only as to which of the decree(s) falls, when or under what circumstances under one or the other of the classification, i.e., joint and inseverable or joint and severable or separable. This aspect seems to have been adjudged in different cases depending upon the nature/source of rights, the cause of action, the manner they were asserted by the parties themselves and the contradictory nature of decrees impossible of execution, likely to result when considered differently. It is for this reason any standardised formula was avoided and matter left for the consideration of Courts, on the peculiar nature of the cases coming for determination.

33. Even assuming that the decree appealed against or challenged before the Higher forum is joint and several but deal with the rights of more than one recognized in law to belong to each one of them on their own and unrelated to the others, and the proceedings abate in respect of one or more of either of the parties, the Courts are not disabled in any manner to proceed with the proceedings so far as the remaining parties and part of the appeal is concerned. As and when it is found necessary to interfere with the judgment and decree challenged before it, the Court can always declare the legal position in general and restrict the ultimate relief to be granted, by confining it to those before the Court only rather than denying the relief to one and all on account of a procedure lapse or action or inaction of one or the other of the parties before it. The only exception to this course of action should be where the relief granted and the decree ultimately passed would become totally unenforceable and mutually self-destructive and unworkable vis-a-vis the other part, which had become final. As far as possible Courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby render the rights themselves otiose, "ubi jus ibi remedium" (where there is a right, there is a remedy) being a basic principle of jurisprudence. Such a course would be more conducive and better conform to a fair, reasonable and proper administration of justice.

34. In the light of the above discussion, we hold:-

(1) Wherever the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for 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 the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The same would be the position in the case of defendants or respondents having similar rights contesting the claims against them.

(2) Whenever different and distinct claims of more than one are sought to be vindicated in one single proceedings, as the one now before us, under the Land Acquisition Act or in similar nature of proceedings and/or claims in assertion of individual rights of parties are clubbed, consolidated and dealt with together by the Courts concerned and a single judgment or decree has been passed, it should be treated as a mere combination of several decrees in favour of or against one or more of the parties and not as joint and inseparable decrees.

(3) The mere fact that the claims or rights asserted or sought to be vindicated by more than one are similar or identical in nature or by joining together of more than one of such claimants of a particular nature, by itself would not be sufficient in law to treat them as joint claims, so as to render the judgment or decree passed thereon a joint and inseverable one.

(4) The question as to whether in a given case the decree is joint and inseverable or joint and severable or separable has to be decided, for the purposes of abatement or dismissal of the entire appeal as not being properly and duly constituted or rendered incompetent for being further proceeded with, requires to be determined only with reference to the fact as to whether the judgment/decrees passed in the proceedings vis-a-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that reason, 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.”

17) In **State of Punjab vs. Nathu Ram**, AIR 1962 SC 89, the Supreme Court enumerated tests to determine whether the whole appeal would abate on account of non-substitution of legal representatives of one or some of the deceased parties. The Court observed as under:

"6. The question whether a Court can deal with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this is possible or is not possible. It may, however, be stated that ordinarily the considerations which weigh with the Court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the Court. The test to determine this has been described in diverse forms. Courts will not proceed with an appeal (s) when the success of the appeal may lead to the Court's coming to a decision which be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the Court's passing a decree which will be contradictory to the decree 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 could not be successfully executed."

18) Again, in the case of **Ram Sarup vs. Munshi**, AIR 1963 SC 553, the Supreme Court held that where a decree is joint one and a part of the decree has become final, by reason of abatement, the entire appeal must be held to be abated.

19) The Supreme Court has, in the case of **Suresh Chandra (Deceased) through LRs & Ors. vs. Parasram & Ors.** 2025 SCC OnLine 1472, after taking note of the aforesaid judgments, summarized the legal position 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/decreed 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.

20) From the foregoing analysis of the legal position, it is clear that the question whether upon death of one of several parties during pendency of a suit or appeal, the suit or appeal would abate as a whole on account of non-substitution of legal heirs of deceased party, is a matter which has to be decided in the facts and circumstances of a particular case. While deciding the said question, the Court should be mindful that it cannot pass inconsistent decrees. Thus, if due to non-substitution of LRs of a deceased party, the decree passed against a deceased party has attained finality by abatement of proceedings qua him, the Court cannot set aside or modify the decree under appeal, as the same would result in passing of inconsistent decrees. In such a situation, the appeal would abate in its entirety.

21) Coming to the facts of the present case, the judgment and decree passed by the learned trial court which is under challenge in these appeals, provides for and determines the shares of the parties to the suit in respect of their ancestral property. It also provides the mode of adjustment of shares between the parties. The judgment and decree under

challenge has been passed on the basis of a compromise arrived at by the parties and the reports of the Commissioners appointed pursuant to the said compromise. The said judgment and the decree is clearly joint and inseverable, inasmuch as it determines the shares of all the parties to the suit in respect of the ancestral property.

22) If appellant No.1 is allowed to proceed with the appeals and this Court decides to allow these appeals, then the issue which has been settled in terms of the judgment and decree passed by the trial court as affirmed by the 1st Appellate Court, would get reopened, even though the said judgment and decree has attained finality against the legal heirs of deceased appellant No.2 as also against the defendants, who have not chosen to challenge the same. Thus, allowing appellant No.1 to proceed with the appeals alone would amount to passing of two conflicting decrees, one upholding the judgment and decree of the trial court qua the legal heirs of appellant No.2, and the other, reopening the whole issue of determination of shares of the parties in the ancestral property. The judgment and decree passed by the learned trial court which is subject matter of the present appeals being joint and inseverable, once the appeals qua appellant No.2 have abated, the appeals in the facts and circumstances of the case would abate in their entirety.

23) Learned counsel for the appellants has, while relying upon the provisions contained in Order 41 Rule 4 of the CPC, contended that the said rule enables one out of several plaintiffs to maintain an appeal against a decree on any ground common to all the plaintiffs and the Appellate Court is vested with power to reverse or vary the decree in favour of all the plaintiffs in such a case. In order to support his contention, the learned counsel has placed reliance upon the judgment of Calcutta High Court in the case of **Santosh Kumar Mondal and Ors vs. Nandalal Chakraparti and Ors.**, AIR 1963 Calcutta 289. In the said case, Calcutta High Court has held that the provisions of Order 41 relate to the procedure to be followed in an appeal and it cannot be said that the said procedure is subject to and is governed by the provisions of Order 22 Rules 3 and 4 CPC. The Court has further held that when there is death of one of the appellants and the legal representatives of deceased appellant are not brought on record, the Appellate Court has power to do justice to the parties and the same has not been curtailed by the legislature.

24) The aforesaid view rendered by the Calcutta High Court is contrary to the law settled on the issue by the Supreme Court in the case of **Suresh Chandra** case (supra). In the said case, the Supreme Court has summarized the legal

position on the interplay between the provisions of Order 41 Rule 4 and Order 22 of CPC qua abatement of an appeal in the following manner:

i. Rule 4 of Order XLI applies to the stage when an appeal is filed and empowers one of the plaintiffs or defendants to file an appeal against the entire decree in certain circumstances. A plaintiff or defendant can take advantage of this provision, but he may not. Therefore, once an appeal is filed by all the plaintiffs or defendants aggrieved by the decree, the provisions of Order XLI, Rule 4 become unavailable.

ii. Rule 4 of Order XLI is to enable one of the parties to a suit to obtain relief in appeal when the decree appealed from proceeds on a ground common to him and others. The court in such an appeal may reverse or vary the decree in favour of all the parties who are having the same interest as the appellant, even though they have not appealed against the decree. This is so, because it is not the law that when a decree is passed on a ground common to all the parties, the appeal is to be filed by all the parties or not at all.

iii. Order XXII applies without exception to all proceedings covered by it. It operates during the pendency of a proceeding including an appeal and not at its institution. Therefore, if an appellant dies during the pendency of the appeal, his legal representatives must be brought on record within the period of limitation. If that is not done, the appeal by the deceased appellant abates.

iv. Where an appeal is filed by any one or some of the plaintiffs, or defendants, aggrieved by the decree, by impleading other such plaintiff(s) or defendant(s) as proforma-respondent(s), in the event of death of such proforma-respondent, the benefit of the provisions of Order XLI Rule 4 would be available to continue the appeal regardless of substitution of LR's of such proforma-respondent.

v. There is no inconsistency between the provisions of Order XXII and those of Rule 4 of Order XLI CPC. They operate at different stages and provide for different contingencies. There is nothing common in their provisions which make the provisions of one interfere in any way with those of the other.

25) From the foregoing analysis of the legal position, it is clear that Rule 4 of Order 41 applies at a stage when an appeal is filed. This provision empowers one of the plaintiffs or defendants to file an appeal against the entire decree in certain circumstances. However, once an appeal is filed by all the plaintiffs or all the defendants aggrieved by a decree, and one of the parties dies during the pendency of the appeal, the provisions of Rule 4 of 41 Rule CPC would not come into play and the consequences of Order 22 of CPC would follow. Thus, while it is open to one of the plaintiffs or defendants to challenge a judgment or a decree, which proceeds on any ground common to all the plaintiffs or defendants, but once the appeal is filed, if one of the parties expires during the pendency of the appeal, it is necessary for the appellants to bring on record the legal representatives of the deceased party, failing which the consequences provided under Order 22 CPC would come into play and the appeal or the proceedings would abate. In the present case, the death of appellant No.2 has taken place during pendency of these appeals and not before filing of these appeals, therefore, it

was necessary for the surviving appellant to bring on record the legal heirs of appellant No.2.

26) Another contention that has been raised by counsel for the appellants is that the estate of deceased appellant No.2 is duly represented by appellant No.1, who happens to be his brother, therefore, the appeals as a whole do not abate. To support his contention, the learned counsel has placed reliance upon the judgment of the Supreme Court in the case of **Shivshankara & Anr. Vs. H. P. Vedavyasa Char**, [2023] 6 SCR 359. In the said case, the Supreme Court has held that where estate of deceased is sufficiently represented and even if the appellant has not filed an application to bring on record the legal representatives of a deceased appellant, the appeal would not abate under Order 22 Rule 4 of the CPC. However, the said position of law has been enunciated by the Supreme Court in the peculiar facts of the said case, inasmuch as in the said case, original defendants were the sons of deceased defendant and, as such, they fully and substantially represented the estate of the deceased defendant.

27) In the present case, appellant No.1 happens to be the brother of deceased appellant No.2. It is pertinent to mention that deceased appellant No.2 is survived by his daughters, who, in fact, had filed applications for substitution of their

names as appellants in place of deceased appellant No.2. However, their applications came to be dismissed by this Court. As per the said applications, deceased appellant No.2 has left behind three daughters, who actually represent his estate and not appellant No.1. Thus, the ratio laid down by the Supreme Court in the aforesaid case cannot be made applicable to the facts of the present case.

28) For what has been discussed hereinbefore, this Court has no hesitation in holding that the impugned judgment and decree passed by the learned trial court, being inseverable and joint, cannot be challenged by appellant No.1 alone without impleading the legal heirs of deceased appellant No.2. Once the appeals qua appellant No.2 have abated, the same would abate in their entirety and, therefore, appellant No.1 cannot proceed ahead with the appeals.

29) Accordingly, the appeals are dismissed as having abated.

(Sanjay Dhar)
Judge

SRINAGAR

24.07.2026

"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES/NO**