IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 293 of 2007
Reserved on: 21.07.2026
Date of Decision: 30.04.2026

Ashok Kumar Sharma ...Appellant

Versus

Sushma Sharma & others ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes

For the Appellant : Mr Pranjal Munjal, Advocates, vice Mr Janesh Gupta, Advocate.

For the Respondents : Mr Suninder Saklani, Advocate for respondents No.1 and 2.

Respondent No.3 is stated to have died.

Respondent No.4 stands ex parte vide order dated 19.10.2023.

Rakesh Kainthla, Judge

Appellant/plaintiff filed a civil suit seeking declarations that the plaintiffs and defendants No.1 and 3 are

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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owners in possession of the suit land as mentioned in the head note of the plaint with a consequential relief of permanent prohibitory injunction for restraining the defendants from claiming any right of ownership and possession.

2. The defendants No.1 and 2 filed a written statement asserting that late Ram Rattan Sharma had executed a Will dated 25.04.1989 in their favour.

3. The learned trial Court held that the plaintiffs and defendants No. 1 and 3 were not the owners in possession of the suit land. Ram Rattan Sharma had executed a valid will in favour of defendants No.1 and 2 in his sound disposing state of mind. Hence, the suit was dismissed.

4. Being aggrieved by the judgment and decree passed by the learned trial Court, the plaintiffs filed an appeal, which was decided by learned District Judge, Kangra at Dharamshala (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that Ram Ratttan had executed a Will in favour of the defendants 1 and 2 in his sound disposing state of mind and plaintiffs and defendants

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No. 1 and 3 could not be called to be the owners in possession of the suit land. Hence, the appeal was dismissed.

5. Being aggrieved by the judgments and decree passed by the learned Courts below, the plaintiff Ashok Sharma filed the present appeal before this Court.

6. Respondent No. 3 (original defendant No.3) died during the pendency of the appeal, and this fact was brought to the notice of the Court on 26.02.2026. The matter was adjourned to enable the appellant to bring on record her legal representatives, but no legal representative was brought on record, even though the statutory period for bringing on record the legal representative had expired.

7. I have heard Mr Pranjal Munjal, learned vice counsel representing the appellant and Mr Surinder Saklani, learned counsel for respondent Nos. 1 and 2 and have gone through the records carefully.

8. It was specifically asserted by the plaintiffs in their plaint that the plaintiffs and defendants 1 and 3 are the legal heirs of late Ram Rattan Sharma. Plaintiffs and defendant No.1

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are the sons, and Defendant No.3 is the daughter of Ram Rattan Sharma. Defendant No.2 is the wife of Defendant No.1. Therefore, it is apparent that the plaintiffs had projected a claim that they are the co-owners, with Defendant Nos. 1 and 3 being the legal heirs of Ram Rattan Sharma. Learned Trial Court dismissed the suit holding that Ram Rattan had executed a valid Will in favour of defendant no. 1 and defendant no. 2, which means that the claim of the plaintiffs that they were the co-owners with defendant no. 1 and defendant no. 3 was negated by the learned trial Court.

9. It was laid down by the Hon'ble Supreme Court in ***Goli Vijayalaxshmi & Ors. v. Yendru Sathiraju (dead) by LRs 2019(11) SCC 352*** that the suit/appeal shall abate as against the deceased defendant where no application is made to bring on record the legal representatives of the deceased defendant within time. Where the decree is joint and indivisible and pursuing the appeal will result in mutually inconsistent contradictory decrees, the appeal will abate in its entirety. It was observed:

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15. In this factual background, it will be apposite to first take note of the principles laid down in respect of abatement of appeals. Order 22 Rule 4(3) CPC specifies that a suit/appeal shall abate as against the deceased defendant where no application is made to bring on record the legal representatives of the deceased defendant within the time stipulated. Further, Order 22 Rule 9 CPC specifies the effect of abatement since it is clarified that no fresh suit is maintainable in respect of the same cause of action.

16. The primary role of the Court is to adjudicate the dispute between the parties and to advance substantial justice. Since the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed within the strict parameters of the law. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is by operation of law but once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek for the setting aside of an abatement.

17. The question arises in reference to the effect of abatement qua the appellants(plaintiffs or defendants), as the case may be, where the decree is joint and indivisible, the appeal against the other defendants will be proceeded with and in the event of an appeal to succeed, there will be two mutually inconsistent/contradictory decrees and more particularly when the suit has already been decreed qua one defendant and the suit would stand dismissed qua the other defendants, in such a given situation, tests have been laid down by this Court to determine as to whether or not to proceed with the appeal.

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18. This Court, while adverting to Order 22 Rule 4 CPC against the other respondent in ***State of Punjab vs. Nathu Ram AIR 1962 SC 89*** 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 (a) when the success of the appeal may lead to the Court's coming to a decision which 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."

19. The exposition of the Constitution Bench in Sardar ***Amarjit Singh Kalra (Dead) by LRs and others (supra)*** is as under: -

"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 the purpose of convenience or otherwise, joined together in single litigation to vindicate their rights the decree

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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 proceeding as the one now before us, under the Land Acquisition Act or in similar nature of proceedings and/or claims in the 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/decree passed in the proceedings vis-a-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that

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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."

20. It was further considered in ***Budh Ram and Others Vs. Bansi and Others 2010(11) SCC 476*** and the principle, therefore, that emerges is to test whether the judgment/decree passed in the proceedings vis-à-vis the remaining parties would suffer from the vice of contradictory or inconsistent decrees inasmuch as 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.

21. Applying the aforesaid principles, the facts of the instant cases on hand clearly manifest that the judgment and decree passed by the trial Court became final qua appellant no. 2 (defendant no. 2) upon abatement of the appeal qua him vide order dated 24th July 2009. If this Court would permit the remaining appellants to prosecute the appeals and, in the event they were to succeed, indisputably, there would be mutually inconsistent/contradictory decrees inasmuch as the suit has already been decreed qua appellant no. 2 (defendant no. 2) on the one hand and the suit would stand dismissed qua appellant nos. 1 & 3 (defendant nos. 1 & 3) or decreed against them in reference to schedule 'C' property and not against appellant no. 2 (defendant no. 2) due to dint of cross-appeal filed by the plaintiff.

22. If the instant appeals were to be allowed, the same would result in a situation where the enforcement of the two decrees would be inexecutable, and the enforcement of one would negate or render impossible the enforcement of the other; and to further simplify, the plaintiffs/respondents would be entitled to the share of the appellant no. 2(defendant no. 2) in the suit schedule

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> 'A' and 'B' properties and there is no way he could enforce the same without negating the enforcement of the other decree viz. dismissal of the suit qua appellant nos. 1 & 3(defendant nos. 1 & 3) since the suit schedule properties each constitute a single unit and the same has not yet been demarcated and/or divided amongst the defendants and without such clear demarcation and delineation of the properties, indisputably, which has not yet happened, it would be impossible for the plaintiffs/respondents to enforce decree qua the appellant no. 2(defendant no. 2) without impinging on the rights of the appellant nos. 1 & 3(defendant nos. 1 & 3).

10. In the present case, the effect of not bringing on record the legal representatives of respondent no.3/defendant no.3 is that the decree has become final qua her, which means that she is not the co-owner of the property of Ram Rattan Sharma with plaintiffs and defendant no. 1. The prosecution of the appeal can result in decree of the suit that the plaintiffs and defendant nos. 1 and 3 are the co-owners which would be contrary to the fact that the defendant no. 3 is not the co-owner with the plaintiffs and the defendant no. 3; therefore, it would be impermissible for the Court to proceed with the appeal. The claim projected by the plaintiffs was joint and indivisible and cannot be severed for granting the relief.

11. The plaintiffs claimed that they are the co-owners with the defendants no. 1 and 3. It was laid down by the Hon'ble

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High Court in ***Ganga Ram versus Battna Ram 1992 (1) Shimla Law Cases 28*** that in the case of co-owners, his estate can only be represented by his legal heirs and not by other co-owners. The effect of abatement in the case of co-owners is that the appeal abates in its entirety and not qua the deceased alone. It was observed:

> After having gone through the rival contentions and the decisions cited at the Bar, I am of the opinion that the submissions made on behalf of the appellants have no force and the appeal deserves dismissal. This was a case in which there was no question of the deceased having a joint estate with the heirs of Mangal. They were not joint in an estate and were thus not covered by the doctrine of survivorship. Admittedly, the estate of Ganga Ram had devolved upon his natural heirs and not on the surviving appellants. None of them could have maintained either the original suit or the appeal without joining the other as a party. As a matter of fact, both of them had jointly filed the suit, which resulted in a decree of dismissal. The success of the appeal will amount to passing conflicting decrees, namely, the suit qua the estate of Mangal being decreed and qua the estate of Ganga Ram being dismissed. The decision in ***Shiv Ram's case (supra)*** has no bearing on the facts of the present case. That was a case of tenancy-in-common and not of joint tenancy. The submission made on behalf of the appellants that by virtue of the provisions of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, heirs of Mangal and Ganga Ram would be deemed to be co-owners of the property has also no force. It is a settled principle of law that when a co-owner dies, his interest can be represented only by his own legal representatives and not by the other surviving owners. In the case of joint owners, the position is different. In that

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> case, the surviving joint owners can represent the interest of the deceased, as joint owners, as effectively as the heirs of the joint owners could. The decisions relied upon on behalf of the respondents are fully applicable to the facts of the present case. The success of the appeal is likely to lead to conflicting decisions, and the surviving appellants alone could not have brought the action for the relief in question against the respondents.

12. It was held by this Court in ***Bala Ram versus State of H.P AIR 1994 HP 5*** that an appeal of co-owners will abate in its entirety. It was observed:

> 14. The next question to be decided is with regard to the effect of the abatement of the appeal qua the deceased. The decision in ***Ramagya Prasad Gupta v. Murli Prasad, AIR 1972 SC 1181,*** noted with approval the three tests applied by the courts in order to determine if the appeal abates in its entirety and held that the tests are not cumulative and even if one of them is satisfied, the court would dismiss the appeal as not properly constituted. The three tests generally applied are : (a) where the appeal if allowed, would lead to the court passing a decree which would be contradictory to the decree which has become final with respect to the same subject matter between the appellant and deceased respondent, (b) where the appellant could not have brought an action for the necessary relief against the respondents alone who are still before the court and (c) where the decree against the surviving respondents, if the appeal succeeds, be ineffective, that is to say, it cannot be successfully executed. In ***State of Punjab v. Nathu Ram, AIR 1962 SC 89***, where the land owned by two persons jointly had been acquired under the Punjab Land Acquisition (Defence of India) Rules and against the award of compensation therein, an appeal was preferred by the State and pending the appeal, one of the owners died and his legal representatives were not brought on

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record, it was held that the entire appeal abated. The test applied was that the appeal of the State, if allowed, would lead to the court passing a decree, which would be contradictory to the decree, which had become final with respect to the same subject matter between the appellant and deceased respondent.

15. The aforementioned procedure was not followed by the lower appellate court. It proceeded to apply another test, namely, the plaintiffs having separate shares in the property and that the deceased could have brought an independent action against the State, without impleading the other plaintiffs as a party. The mere fact that the claimants had separate shares in the property is not a conclusive factor. Specification of shares or interest of the deceased does not affect the nature of the decree and the capacity of the joint decree to execute the decree in its entirety. The plaintiffs had claimed to be co-owners in the land and not as joint owners. In case the claim had not been made as joint owners, even the test of the surviving respondents, in the appeal effectively representing the estate of the deceased, would not be made applicable.

16. A Division Bench of this Court in ***Shiv Ram v. Bhagat Ram, ILR 1978 HP 158 : (AIR 1979 HP 12)***, held that when a co-owner dies, his interest can be represented only by his own legal representatives and not by his co-owners. It is only in the case of joint owners, where the position is different because the surviving joint owners can represent the interest of the deceased joint owners, as effectively as the heirs of the said deceased joint owner can, unless, of course, the peculiar facts of a given case reveal that the deceased joint owner had some adverse claims against the surviving joint owners.

17. In the case in hand, it was a joint decree, which had been passed in favour of the co-owners, holding them to be the owners of the suit property and entitled to compensation for acquisition of part of the property. The effect of the abatement, in so far as the deceased is concerned, was an affirmance of the decree qua him. In

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> case the first test is applied, it would result in conflicting decrees, in the event of the appeal of the State being allowed, with respect to the same subject matter. The nature of the decree is such that the deceased alone could have executed the same.

13. Similarly, it was held in ***Parmodh Ram versus Rajinder Parshad AIR 2006 HP 30*** that when some of the co-owners had died, the suit cannot be decreed against the other co-owners as there cannot be two conflicting decrees in the same suit. It was observed:

> 9. However, the matter does not rest here. As referred to above, the trial Court had earlier partly decreed the suit of the plaintiffs, vide judgement and decree dated 30-11-1994. The appeal filed by Rajinder Parshad defendant No. 1 was allowed by the learned District Judge, vide order dated 26-6-1998, the judgement and decree of the trial Court were set aside and the case was remanded to the Trial Court for fresh decision in accordance with law after holding that two of the defendants namely, Diwaker Datt and Raghbir Dass had died even before the institution of the suit and their legal representatives were not brought on record and the trial Court was to decide the question as to whether the suit had abated and whether these deceased defendants were to be substituted by their legal representatives. In spite of the aforesaid order dated 26-6-1998 passed by the learned District Judge, no steps were taken by the plaintiff to bring on record the legal representatives of these defendants, namely, Diwaker Datt and Raghbir Dass, who had died even before the institution of the suit. On the other hand, an application under Order 22 Rules 1 and 4 read with Section 151, CPC was filed on 15-12-1999, alleging therein that the suit had abated qua the rights of various deceased defendants mentioned therein, including Raghbir Dass and Diwaker

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> Datt. As referred to above, in this application, neither the dates of death of these defendants, including Diwakar Datt and Raghbir Dass, had been mentioned, nor the names and particulars of the legal representatives of these defendants had been given. In the absence of the same, in my opinion, the present suit is liable to be dismissed since the suit was filed against the dead persons. Admittedly, defendants No. 12 and 15, namely Raghbir Dass and Diwakar Datt, were also co-owners in the suit property and the plaintiff had sought a declaration that he had become an owner of the suit property and such a declaration could not be given qua the share of defendants No. 12 and 15, namely Raghbir Dass and Diwakar Datt. Since the legal representatives of these defendants were not brought on record at any stage, the suit qua defendants No. 12 and 15, namely, Raghbir Dass and Diwakar Datt, was liable to be dismissed as no decree could be passed against the dead persons. Once the suit is dismissed qua the share of defendants No. 12 and 15, namely, Raghbir Dass and Diwaker Datt, the suit qua the remaining defendants is also liable to be dismissed on the short ground that two contradictory decrees could not be passed in respect of the suit property inasmuch as all the defendants were the joint owners of the suit property and the suit having been dismissed qua defendants No. 12 and 13 who were co-owners in the suit property, the suit qua the share of other defendants who were also co-owners in the suit property, is also liable to be dismissed on this ground alone.

14. Therefore, the effect of not bringing on record the legal representatives of deceased respondent no. 3 would result in the abatement of the appeal as a whole, and it is not permissible to pursue the appeal filed by the plaintiff/ appellant.

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15. In view of the above, the present appeal is dismissed as having abated.

16. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

30th July, 2026
(Ravinder)

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