

**(1977) 08 OHC CK 0017**  
**In the Orissa High Court**  
**Case No : Civil Revision No. 92 of 1976**

Jhata Mallik and Others

APPELLANT

Vs

Tinkadi Chand Mandal and Others

RESPONDENT

**Date of Decision :** 30-08-1977

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 6

**Citation :** AIR 1978 Ori 127 : (1977) 44 CLT 594

**Hon'ble Judges :** R.N. Misra, J

**Bench :** Single Bench

**Advocate :** S. Mohanty and K.C. Singh, for the Appellant; R.N. Sinha, S.N. Sinha and P.K. Routray, for the Respondent

**Final Decision :** Dismissed

## Judgement

R.N. Misra, J.—Some defendants in a pending suit for declaration of title and recovery of possession with other ancillary reliefs have filed this revision u/s 116 of the CPC being aggrieved by the order of the learned Subordinate Judge, Baripada, rejecting their application that the suit has abated on the ground that defendant No. 1, a joint tortfeasor, having died, his legal representatives have not been substituted.

2. Plaintiff filed Title Suit No. 88 of 1970 in the court of the Subordinate Judge at Baripada on 20th of Oct., 1970, asking for a declaration of title, recovery of possession, grant of permanent injunction and recovery of mesne profits. He alleged that the defendants jointly in a gang disturbed plaintiff's peaceful possession and forcibly cut away the paddy in Dec. 1967, though the same had been grown by the plaintiff. In 1968 defendants with their supporters in a body forcibly dispossessed the plaintiff from the disputed land and have remained in possession as a result of which the plaintiff is not able to grow crops in his land.

3. On plaintiff's own allegations there is no scope to dispute defendant's contention that the defendants were described as joint tortfeasors. The legal

position is well settled as far as this court is concerned that abatement of a suit against one joint tortfeasor brings about a total abatement of the suit. Defendant No. 1 died on 4-3-1972 leaving behind legal representatives. Plaintiff, however, did not ask for substitution as required by law. Defendants-petitioners thereupon applied to the trial court for an order that the entire suit had abated. The learned Subordinate Judge came to find that the plaintiff and the defendant No. 1 had filed a petition of compromise on 1-2-1971 and, therefore, defendant No. 1's death and non-substitution of his legal representatives would not bring about any abatement, so far as the suit is concerned.

4. The petition of compromise which was filed in the court on 1-2-1971 when translated into English reads thus :--

"Compromise between plaintiff & defendant No. 1.

We beg to state that plaintiff and defendant No. 1 are residents of one village. Villagers who are well-wishers of the parties had intervened and brought about the following compromise between us :--

- i) Plaintiff as title holder was in cultivating possession of the disputed property and his claim in the plaint is true and justified;
- ii) Plaintiff and defendant No. 1 had no mutual claim against each other and both parties undertake to bear their respective Costs.

The parties to the compromise therefore pray that the suit be disposed of in terms of the compromise."

On that day, the learned Subordinate Judge passed the following orders:

"...Plaintiff and defendant No. 2 (?) file a compromise petition. The compromise petition is in order. The petition of compromise is read over and explained to plaintiff and defendant No. 1 and they admit the terms of compromise to be correct.....".

The learned Subordinate Judge could have passed a decree on the basis of the compromise which he has accepted. He, however, deferred recording such an order until the suit terminated. In these circumstances the suit has not been disposed of so far as plaintiff and defendant No. 1 are concerned on terms of compromise. The trial court could have brought about an end of the litigation so far as the parties are concerned in view of the ratio indicated in the case of Bai Chanchal and Others Vs. Syed Jalaluddin and Others, .

5. The question in these circumstances for consideration is whether for not bringing the legal representatives of defendant No. 1 on the record, the suit could abate. Mr. Mohanti for the petitioners is right in his submission that until the decree was passed, the defendant No. 1 continued to be on the record notwithstanding the order dated 1-2-71. I, however, do not think, so far as defendant No. 1 is concerned, he had any further role to play in the litigation. The trial court has already recorded its satisfaction that the compromise is in

order and the admission of the party has also been indicated. For recording a formal order, defendant No. 1 is not even entitled to be heard. In these circumstances, I would agree with the view taken by the trial court that there would be no scope to hold that the suit has abated against defendant No. 1 much less as a whole.

6. The revision has no merit and must, therefore, be dismissed. I make no direction for costs.

7. The suit is already six years old and the learned Subordinate Judge is, therefore, directed to expedite its disposal. The records be sent down quickly.