

(2026) 03 MP CK 0831

In the Madhya Pradesh High Court, Jabalpur Bench

Case No : First Appeal No. 20 Of 1998

Mohammad Iqbal @ Kallu Khan

APPELLANT

Vs

Nagar Nigam Bhopal Thru. Commissioner

RESPONDENT

Date of Decision : 09-03-2026

Acts Referred:

Code Of Civil Procedure, 1908 — Section 2(11), 33, 234, Order 20, Order 20 Rule 1, Order 22 Rule 3, Order 22 Rule 4, Order 22 Rule 5, Order 41 Rule 30

Citation : (2026) 03 MP CK 0831

Hon'ble Judges : Deepak Khot, J

Bench : Single Bench

Advocate : Ashok Lalwani, Ghanshyam Sharma, Manish Kumar Rajak

Final Decision : Disposed Of

Judgement

Deepak Khot, J

Heard on IA No. 4546/2026, an application under Order 22 Rule 3 of the Code of Civil Procedure, filed by the natural heirs of deceased appellant.

It has been contended by the learned senior counsel appearing for the legal representative represented through Will that the natural heirs are not required to be impleaded/substituted after the death of the original appellant because the application for substitution was filed by him on the basis of Will, which was again further referred to the Civil Court for enquiry under Order 22 Rule 5 of CPC. The Civil Court, after due enquiry, has found that the applicant's claim of representation of estate of the deceased appellant is based on Will, which is found to be genuine for the purpose of representation. Accordingly, this Court vide order dated 13.01.2026 has ordered substitution of the applicant claiming representation on the basis of Will as legal representative of the deceased appellant.

Counsel for the proposed applicant/L.Rs./natural heirs of the deceased appellant has submitted that the applicants being the natural heirs of the deceased

deserve to be substituted after the death of the deceased appellant. It is submitted that estate of the deceased deserves to be represented through L.Rs. and it is not disputed that the applicants are not the natural heirs and governed by the rule of succession.

Heard learned counsel for the parties and perused the record.

It is evident that this Court vide order dated 19.09.2022 has ordered enquiry under Order 22 Rule 5 of CPC for impleadment of the proposed legal representative of the deceased appellant sought on the basis of Will. Thereafter, this application has been filed. Now the only controversy, which has been raised by the parties, that in case of decree, who will reap the fruits of the decree, the person in whose favour the Will has been executed by the deceased appellant or the natural heirs. It is settled law that for the purpose of representation, the Court is not required to see the adverse title of the parties inter-se, but it is the only purpose that the estate of the deceased party should be represented properly.

The Hon'ble Apex Court in case of Custodian of Branches of Banco National Ultramarino vs. Nalini Bai Naique reported in 1989 Supp (2) SCC 275 in paras 4 and 5 has held as under:-

"4. After hearing learned Counsel for the parties, we are of opinion that the learned Judicial Commissioner committed serious error of law in setting aside the order of the trial Judge. "Legal representative" as defined in Civil Procedure Code which was admittedly applicable to the proceedings in the suit, means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The definition is inclusive in character and its scope is wide, it is not confined to legal heirs only instead it stipulates a person who may or may not be heir, competent to inherit the property of the deceased but he should represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". If there are many heirs, those in possession bona fide, without there being any fraud or collusion, are also entitled to represent the estate of the deceased. In the instant case it is not disputed that under the Portuguese Law of Inheritance which was applicable to Goa at the relevant time Mrs Nalini Bai had acquired "Meeira rights" according to which she had acquired half share in the estate left by the deceased Vinaique Naique and the remaining half share was inherited by sons and daughters of the deceased who were subsequently brought on record. On the admitted facts Mrs Nalini Bai therefore represented the estate of the deceased Vinaique Naique. Once the name of Mrs Nalini Bai was brought on record within time and the application for setting aside abatement was allowed by the trial Judge, the suit could proceed on merits and the mere fact that the remaining

legal representatives were brought on record at a subsequent stage could not render the suit defective. The Custodian of the appellant Bank had no knowledge that there were other legal representatives of deceased defendant along with Mrs Nalini Bai. He had filed affidavit that on making diligent and bona fide inquiry, he had come to know that Nalini Bai was the sole legal representative but later on the acquired knowledge that the deceased had left four sons and two daughters as legal representatives, along with Mrs Nalini Bai, therefore, he made another application for bringing them on record. The trial Judge accepted the testimony of the Custodian, and placing reliance on the decision of Andhra Pradesh High Court in *Mannem Venkataramaiah v. M. Munnemma* [AIR 1963 AP 406 : (1963) 1 Andh WR 338] he allowed the substitution application. The trial court committed no error in law, instead he applied correct principles of law.

5. In *Daya Ram v. Shyam Sundari* [(1965) 1 SCR 231 : AIR 1965 SC 1049] , this Court recognised the principle of representation of the estate by some heirs, where the defendant died during the pendency of the suit to enforce claim against him and all the heirs are not brought on record within time. This Court held that if after bona fide inquiry, some, but not all the heirs, of a deceased defendant, are brought on record the heirs so brought on record represent the entire estate of the deceased and the decision of the court in the absence of fraud or collusion binds even those who are not brought on record as well as those who are impleaded as legal representatives of the deceased defendant. In *N.K. Mohd. Sulaiman v. N.C. Mohd. Ismail* [(1966) 1 SCR 937 : AIR 1966 SC 792] this Court rejected the contention that in a suit to enforce a mortgage instituted after the death of a Muslim, if all the heirs of the deceased were not impleaded in the suit and a decree was obtained, and in execution the property was sold, the auction purchaser could have title only to the extent of the interest of the heirs who were impleaded, and he could have no title to the interest of those heirs who had not been impleaded to the suit. The court held, that those who were impleaded as party to the suit in place of the deceased defendant represented the entire estate as they had share in the property and since they had been brought on record the decree was binding on the entire estate."

The Hon'ble Apex Court in case of *Andhra Bank Ltd. vs. R. Srinivasan and others* reported in 1961 SCC OnLine SC 342 in para 17 has held as under:-

"17. That takes us to the other argument raised by Mr Viswanatha Sastri on behalf of the respondents. He contends that Respondents 2 to 12 who are in possession of different pieces of property belonging to the deceased Raja Bahadur under the will executed by him cannot be said to be his legal representatives under Section 2(11) of the Code. Section 2(11) provides, inter alia, that a legal representative means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased. It is well known that the expression 'legal representative' had not been defined in the Code of 1882 and that led to a difference of judicial opinion as to its denotation. In *Dinamoni Chaudhurani v. Elahadut Khan* [(1903-

4) 8 CWN 843] the Calcutta High Court had occasion to consider these conflicting decisions. It was urged before the High Court that the term 'legal representative' used in Section 234 of the said Code had to be construed strictly and could not include anybody except the heir, executor or the administrator of the deceased. The argument was that the term had been taken from the English law and its scope could not be extended. This argument was rejected by Brett and Woodroffe, JJ. Woodroffe, J. examined the several judicial decisions bearing on the point and observed "from this review of the authorities it will appear that judicial decisions have extended the sense of the term "legal representative" beyond that of its ordinary meaning of "administrator, executor, and heir" and though such extension has been attended with doubt and has in some cases been the subject of conflicting decision it appears to me to be too late now to endeavour, however convenient it might be, to secure for the term that which is perhaps its strict and legitimate sense. I agree, therefore, in holding that the term is not limited to administrators, executors and heirs and am of opinion that it must now be held to include any person who in law represents the estate of a deceased judgment-debtor. It would be relevant to observe that the view thus expressed by Woodroffe, J. has been embodied in the present definition of "legal representative" by Section 2(11)."

Further in case of Jaladi Suguna (Deceased) Through L.Rs. vs. Satya Sai Central Trust and others reported in (2008) 8 SCC 521 , the Hon'ble Apex Court in paras 12 to 19 has held as under:

"12. "Legal representative" according to its definition in Section 2(11) CPC, means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased. Thus a legatee under a will, who intends to represent the estate of the deceased testator, being an intermeddler with the estate of the deceased, will be a legal representative.

13. Order 22 CPC, inter alia, deals with death of parties. Rule 4 relates to the procedure in case of death of one of several defendants or of the sole defendant. Rule 5 relates to determination of question as to the legal representative. Rule 11 relates to application of Order 20 to appeals. The said Rules, to the extent relevant, are extracted below:

"4. Procedure in case of death of one of several defendants or of sole defendant. —(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, 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 a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

5.Determination of question as to legal representative.— Where a question arises as to whether any person is or is not the legal representative 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, that 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 the same into consideration in determining the question.

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, the word 'suit' an appeal."

(emphasis supplied)

14. When a respondent in an appeal dies, and the right to sue survives, the legal representatives of the deceased respondent have to be brought on record before the court can proceed further in the appeal. Where the respondent-plaintiff who has succeeded in a suit, dies during the pendency of the appeal, any judgment rendered on hearing the appeal filed by the defendant, without bringing the legal representatives of the deceased respondent-plaintiff on record, will be a nullity. In the appeal before the High Court, the first respondent therein (Suguna) was the contesting respondent and the second respondent (the tenant) was only a pro forma respondent. When the first respondent in the appeal died, the right to prosecute the appeal survived against her estate. Therefore, it was necessary to bring the legal representative(s) of the deceased Suguna on record to proceed with the appeal.

15. Filing an application to bring the legal representatives on record, does not amount to bringing the legal representatives on record. When an LR application is filed, the court should consider it and decide whether the persons named therein as the legal representatives, should be brought on record to represent the estate of the deceased. Until such decision by the court, the persons claiming to be the legal representatives have no right to represent the estate of the deceased, nor prosecute or defend the case. If there is a dispute as to who is the legal representative, a decision should be rendered on such dispute. Only when the question of legal representative is determined by the court and such legal representative is brought on record, can it be said that the estate of the deceased is represented. The determination as to who is the legal representative under Order 22 Rule 5 will of course 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 legal representative, any right to the property which is the subject-matter of the suit, vis-à-vis other rival claimants to the estate of the deceased.

16. The provisions of Rules 4 and 5 of Order 22 are mandatory. When a respondent in an appeal dies, the court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representatives, as parties to the appeal without deciding who will represent the estate of the deceased, and proceed to hear the appeal on merits. The court cannot also postpone the decision as to who is the legal representative of the deceased respondent, for being decided along with the appeal on merits. The Code clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the court. The Code also provides that where one of the respondents dies and the right to sue does not survive against the surviving respondents, the court shall, on an application made in that behalf, cause the legal representatives of the deceased respondent to be made parties, and then proceed with the case. Though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of the appeal on merits, Rule 4 read with Rule 11 makes it clear that the appeal can be heard only after the legal representatives are brought on record.

17. The third respondent, who is the husband of the deceased, wants to come on record in his capacity as a sole legal heir of the deceased, and support the case of the Trust that there was a valid gift by the deceased in its favour. On the other hand, the appellants want to come on record as testamentary legatees in whose favour the suit property was bequeathed by will, and represent the estate of the deceased Suguna as intermeddlers. They want to continue the contest to the appeal. When Suguna, the first respondent in the appeal before the High Court died, the proper course for the High Court, was first to decide as to who were her legal representatives. For this purpose the High Court could, as in fact it did, refer the question to a subordinate court under the proviso to Rule 5 of Order 22 CPC, to secure findings. After getting the findings, it ought to have decided that question, and permitted the person(s) who are held to be the legal representative(s) to come on record. Only then there would be representation of the estate of the deceased respondent in the appeal. The appeal could be heard on merits only after the legal representatives of the deceased first respondent were brought on record. But in this case, on the dates when the appeal was heard and disposed of, the first respondent therein was dead, and though rival claimants to her estate had put forth their claim to represent her estate, the dispute as to who should be the legal representative was left undecided, and as a result the estate of the deceased had remained unrepresented. The third respondent was added as the legal representative of the deceased first respondent only after the final judgment was rendered allowing the appeal. That amounts to the appeal being heard against a dead person. That is clearly impermissible in law. We, therefore, hold that the entire judgment is a nullity and inoperative.

18. We may look at it from yet another angle. The relief sought by Suguna in the

suit was one in regard to which the right to sue would have survived to her legal representatives if she had died during the pendency of the suit. She successfully prosecuted the suit and obtained the decree declaring the deed to be void. The said decree would continue to be in force unless it is set aside in a manner known to law. It could be set aside in an appeal filed by the aggrieved party, but only after hearing the plaintiff who had secured the decree. Pronouncement of judgment in a case, can be only after the case has been heard. (Vide Section 33, Order 20 Rule 1 and Order 41 Rule 30 CPC.) When the respondent-plaintiff died and his/her estate remained unrepresented, it cannot be said that the appeal was "heard". When the respondent-plaintiff died, the legal representatives who succeeded to her estate will have to be brought on record and they should be heard in their capacity as persons representing the estate of the deceased plaintiff. If they are not heard, there is no "hearing" of the appeal in the eye of the law. Consequently, the judgment of the trial court could not be disturbed or set aside by the appellate court. Be that as it may.

19. We, accordingly, allow this appeal and set aside the judgment dated 19-9-2006, restore the appeal to the file of the High Court, with the following directions:

(i) The High Court shall first decide the dispute between the husband of the deceased on the one hand, and her nieces and nephews on the other, after considering the evidence and findings dated 28-11-2005 recorded by the trial court and hearing the rival claimants.

(ii) After such determination, the person(s) determined to be the person(s) entitled to represent the estate of the deceased shall be brought on record as the legal representatives of the deceased.

(iii) Thereafter, the appeal shall be heard on merits and disposed of in accordance with law."

On the basis of above enunciation of law, it is clear that at the time of substitution, the Court is not required to decide the adverse title inter-se between the claimants of the deceased claimed on the basis of non-testamentary succession or testamentary succession. The enquiry, which has been conducted under Order 22 Rule 5 of CPC, is only for the purpose of representation, therefore, in case the appeal succeeds then the parties have to establish their own right to claim right, title, interest in the estate of the deceased.

As in the present case in hand the Will has been executed by the deceased appellant, but the same has not been challenged by the natural heirs in the enquiry conducted under Order 22 Rule 5 of CPC, therefore, for the purpose of representation, the applicants are directed to be impleaded as parties, but for the purpose of claiming their rights being natural heirs, on the basis of succession, the applicants have to establish their rights by getting it declared by the competent court of law.

With the aforesaid, IA No. 4546/2026 is disposed of and closed.
The applicants are directed to be impleaded as party/appellant.