

**(2025) 12 SHI CK 0021**

**Himachal Pradesh HC**

**Case No:** First Appeal Order (ORD) No. 74 Of 2025

Jagdish Chand & Others

APPELLANT

Vs

Lachhmi Devi And Others

RESPONDENT

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**Date of Decision:** Dec. 20, 2025

**Acts Referred:**

- Code Of Civil Procedure, 1908-Order 6 Rule 17

**Hon'ble Judges:** Sushil Kukreja, J

**Bench:** Single Bench

**Advocate:** Lovneeesh Kanwar, Tek Chand, Manjeet Kaur, Naveen K. Bhardwaj

**Final Decision:** Disposed Of

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### **Judgement**

Sushil Kukreja, J

1. The instant appeal has been preferred by the appellants/ defendants against the judgment dated 10.12.2024, passed by the learned Additional District Judge, Sarkaghat, District Mandi, HP, in Civil Appeal No.17 of 2021, whereby the judgment and decree dated 25.07.2018, passed by the learned Senior Civil Judge, Court No.1, Sarkaghat, District Mandi, HP, in Civil Suit No.176 of 2010, was set-aside and the matter was remanded back for fresh trial.

2. During pendency of the present appeal, the appellants have filed two applications, being CMP(M)s No.1458 & 1459 of 2025, for bringing on record the legal heirs of respondents No.6 and 16, after condoning the delay. Perusal of the aforesaid applications reveals that respondent No.6-Bakshi, had died on 22.06.2024 and respondent No.16-Rattan had died on 02.12.2023, during the pendency of the appeal before the learned First Appellate Court. However, the learned First Appellate Court had passed the impugned judgment on 10.12.2024. Therefore, the impugned judgment admittedly is against the dead persons, i.e., respondents No.6 and 16. There is no quarrel so as to the fact that respondents No.6 and 16 have expired well before the decision in the appeal by the learned First Appellate Court. No doubt,

applications, i.e. CMPs(M) No.1458 & 1459 of 2025, for bringing on record the legal heirs of respondents No.6 & 16, after condoning the delay, have been filed in the present appeal, however, the question of substitution of their legal heirs and the question as to whether the appeal on their death stands abated, for want of consequential steps, are the questions to be gone into and determined by the learned First Appellate Court below

3. It is settled proposition of law that where a party dies in a pending suit/appeal and judgment/decreed is passed in ignorance to such death, the question of substitution of his/her legal heirs and setting aside the abatement, if any, can only be considered by the Court, before whom the suit/appeal was pending at that time.

4. In *Jagan Nath and others versus Smt. Ishwari Devi*, 1988 (2) Shimla Law Cases 273, it has been held that the question of substitution of legal representatives of a deceased party and the abatement of the suit/appeal for want of consequential steps has to be decided by that very Court where at the time of death of such party, the lis was pending. Paragraph 6 of the aforesaid judgment reads as under:-

**6. The fact that one of the several defendant -appellants against whom an indivisible decree was passed by the trial Court, had died during the pendency of the appeal before the lower appellate court, and steps to bring his legal representatives on the record of the appeal had not been taken within the prescribed period, being undisputed, it must be held that the appeal had already abated prior to the decision of the lower appellate court dated April 9, 1987. The decree of the lower appellate court was thus a nullity as it had been passed also against a dead person. The legal position is not in dispute. What is the course which should normally be adopted in a situation like this, has been succinctly stated in the decision of the Calcutta High Court in *Kanailals case* (supra). It was observed by the Division Bench, after noticing the decisions of various High Courts and the Supreme Court, that:**

**.. In such circumstances, in our opinion the uniform procedure followed by the other High Courts as referred to hereinbefore should be accepted, namely, the ineffective decree passed by the court of appeal below should be set aside and the appeal should be remanded to the said court, keeping it open to the appellants to move the said court for an opportunity to have the abatement set aside if the appellants could satisfy the said court that they are so entitled in law**

**I am in entire agreement with the aforesaid observations.**

5. Further in *Karam Chand and others versus Bakshi Ram and others*, 2002 (1) Shimla Law Cases 9, it has again been held that as and when the questions with respect to substitution of legal heirs of deceased party and abatement of the suit or appeal for want of consequential steps, arise in relation to a suit or appeal, these are to be decided by the Court in which the suit or appeal was pending at the time of the

death of the party. Relevant paragraphs of the aforesaid judgment read as under:

**"4. In the given circumstances of the case, one or the questions which arises for determination is as to the effect of death of Pohlo Ram and not bring on record his legal representatives in the appeal before the lower appellate Court or in other words, the questions now involved in the matter are as follows:**

**(i) Whether the appeal before the lower appellate Court had abated, if so the effect and extent of the abatement;**

**(ii) Whether the abatement should be set aside or not; and**

**(iii) Whether the legal representatives of the deceased may be allowed to be brought on record or not?**

**5. It is well settled that as and when the questions, as aforesaid, arise in relation to a suit or appeal, at the first instance, these are to be decided by the Court in which the suit or appeal was pending at the time of the death of the party and abatement, if any, took place**

6. Similarly, the apex Court in *Kishun @ Ram Kishun versus Bihari*, AIR 2005 Supreme Court 3799, has held that a judgment against or in favour of a dead person is nullity.

7. In the present case, respondents No.6 and 16 died before the judgment was passed by the learned First Appellate Court, hence, the question of substitution of their legal heirs and setting aside the abatement, if any, was to be decided by the said Court where at the time of death of respondents No.6 and 16, the appeal was pending. Accordingly, the impugned judgment dated 10.12.2024 passed in Civil Appeal No.17 of 2021 as well as order dated 10.12.2024 passed in CMA No.194/24, by the learned Additional District Judge, Sarkaghat, District Mandi, HP, whereby the application under Order 6, Rule 17, PC for amendment of plaint was allowed, are set aside having been passed against the dead persons and the present appeal is remanded back to the learned learned Additional District Judge, Sarkaghat, District Mandi, HP, with a direction to decide the question of abatement and to bring on record the legal heirs of deceased respondents No.6 and 16, after affording due opportunity of being heard to the parties and thereafter decide the appeal as well as application filed under Order 6, Rule 17 of CPC, afresh strictly in accordance with law. The parties through learned counsel representing them are directed to appear before learned First Appellate Court on **16.01.2026**. Records be sent back forthwith. The appeal stands disposed of accordingly, so also the pending application(s), if any.