

## Thakuri Bai Vs Laxmi Chand and Others

**Court:** Delhi High Court

**Date of Decision:** Nov. 28, 1989

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 22 Rule 3  
Constitution of India, 1950 â€” Article 227

**Citation:** AIR 1990 Delhi 217 : (1990) 40 DLT 185

**Hon'ble Judges:** A.B. Saharya, J

**Bench:** Single Bench

**Advocate:** Ravinder Sethi, Naresh Thanai, Rishikesh and A.K. Srivastava, for the Appellant;

### Judgement

Arun B. Saharya, J.

(1) By this petition under Article 227 of the Constitution of India, the petitioners have challenged two orders made by the Executing Court dated

21st of November 1987 and 24th of January 1989, hereinafter referred to as the first and the second impugned orders respectively.

(2) By the first impugned order, the Court held that the execution proceedings instituted by Decree-Holder Thakuri Bai had abated as no

application had been made till then by the legal representatives after her death on 8th December, 1986 By the second impugned order, the Court

dismissed an application filed by the petitioners to set aside the first impugned order and to allow them to be brought on record as legal

representatives of the deceased decree holder and to continue the execution proceedings.

(3) The petitioners claim to be legal representatives of Thakuri Bai by virtue of a registered Will dated 2nd of June 1981 They. claim that the

interest of Thakuri Bai in respect of shop No. 122, Khanna Market, Lodi Colony, New Delhi, and a decree obtained by her for possession and

mesne profits in respect of the said shop against Laxmi Chand. respondent No. 1, devolved upon them on the death of Thakuri Bai on 8th of

December 1986 and that they are entitled to continue the execution proceedings after her death.

(4) According to the petitioners Bisan Das, the pre-deceased husband of Thakuri Bai, was an allottee of the said shop. Initially Bisan Das

employed Laxmi Chand to look after the business carried on by him at the said shop. Later, he took Laxmi Chand as his partner. The partnership

was eventually dissolved. But, Laxmi Chand did not hand over possession of the shop to Bisan Das.

(5) Laxmi Chand set up a claim for possession as a tenant and made an application u/s 9 of the Delhi Rent Controller Act, 1958 for fixing

standard rent of the shop. Bisan Das contested this application. He died during the pendency of these proceedings and his widow Thakuri Bai was

brought on record as his legal representative. The Rent Controller held that there was no relationship of landlord and tenant between the parties.

(6) Thereafter, Thakuri Bai filed a suit for recovery of possession of the said shop and mesne profits against Laxmi Chand, hereinafter referred to

as the first suit. The Civil Court held that Laxmi Chand was not a tenant, that he has an unauthorised occupant, and passed a decree for possession

of the said shop as also for recovery of mesne profits. Thakuri Bai filed another suit for the recovery of mesne profits for the subsequent period,

hereinafter referred to as the second suit. Appeals preferred by Laxmi Chand from the decrees passed in the first and the second suit were

dismissed in due course.

(7) In April 1982, after dismissal of the first appeal against the decree passed in the first suit, Thakuri Bai filed an application for execution of the

Decree against Laxmi Chand. This application was numbered as Execution Case No. 26 of 1982. Laxmi Chand, however, preferred a second

appeal to this Court and thereafter a SLP to the Supreme Court for getting aside the decree, but in vain. Thus, Laxmi Chand finally lost the battle

by the dismissal of his SLP on 14th December 1984. Then, in January 1985, his son Krishan Kumar filed objections in the execution proceedings,

on the ground, inter alia, that a firm M/s. Krishna Brothers, respondent No. 2, in which he is a partner, is in occupation of the said shop as an

independent tenant. Before these objections could be disposed of, Thakuri Bai died on 8th of December, 1986.

(8) The first impugned order was made on 21st of November 1987 on an application filed by the objector, respondent No. 2. In this application, it

was alleged that no application had been moved by the legal representatives of the deceased decree-holder despite the lapse of more than eight

months and it was prayed that the proceedings ""be dropped being abated"". The General Attorney of Thakuri Bai, who had been prosecuting the

case during her lifetime, filed a reply to this application. He took up a position : ""there is no need to bring the legal representatives/legal heirs on

record in execution case"". On this application, the Court held that the General Attorney of the deceased decree-holder had no authority to continue

the proceedings and ""her LRs only have the authority to proceed with the present petition"". The Court observed : ""In my view the proceedings

have thus abated. Any how, if any legal representative of the deceased Dh comes forward he/she shall have her/his rights as per provisions of law".

Consequently, the Court "dismissed" the execution proceedings "as abated".

(9) Thereafter, on 10th of December 1987, the petitioners moved an application with a prayer to set aside the first impugned order and to take

them on record as legal representatives of the deceased decree-holder. The petitioners, somehow, invoked "the provisions of Order Xxii Rule 9

and Order Xxii Rule 4A read with Section 151 C P.C.". It must be mentioned at the outset that this application was not so well drafted as one

would like it to be. Nevertheless, it was averred in it that the petitioners, whose names and particulars were mentioned in the application, were

only legal heirs of deceased Smt. Thakuri Bai" and that the proceedings in execution cannot abate. It was also pleaded, perhaps, under an

erroneous belief that the provisions made under Rule 4 of Order Xxii, Code of Civil Procedure, hereinafter referred to as Cpc, was applicable,

and "That the applicant have received the knowledge on 22nd November, 1987 and application is within time". This application has been

dismissed by the second impugned order on the ground that it is "not maintainable". Further, fault has been found with the application for three

reasons. First, that the applicants have not indicated the details to explain how they came to know of the execution proceedings. Secondly, that it

has not been shown how ""cause of action survives in their favor". Thirdly, that the application "has also not been filed within the period of

limitation".

(10) "MR. Ravinder Sethi, learned counsel for the petitioners, has contended that proceedings in execution of a decree cannot abate and both the

impugned order are, Therefore, without jurisdiction and the same should be set aside.

(11) There is considerable force in the proposition urged by Mr. Sethi. Generally, where any proceeding is taken or application made by a person,

then the proceeding can be continued by any person claiming under him. This general rule is enacted in Section 146. CPC. This rule is subject to

any provision otherwise made by the CPC or by any other law. Provision has been made in Order 22 Rules 3, 4 and 8, Cpc, for abatement of

proceedings in a suit in the circumstances envisaged in those rules. These provisions, however, do not apply to proceedings in execution of a

decree. This doctrine has been given legislative sanction by an express provision made in Rule 12 in these words : nothing rules 3, 4 and 8 shall

apply to proceedings in execution of a decree or order". This, however, does not imply that legal representatives of a deceased decree-holder

should not be brought on record nor that proceedings in execution could continue despite the death of a decree-holder without any representation

of the estate on record. Legal representatives of the deceased decree-holder should, no doubt, come on record to continue the proceedings but

the penalty imposed on the legal representatives of the deceased plaintiff under Rule 3, namely, that the suit shall abate where no application is

made within the time limited by law for this purpose, does not apply to proceedings in execution by virtue of the said Rule, 12. A fortiori the bar of

limitation cannot be invoked in respect of an application for bringing on record legal representatives of a deceased decree holder in proceedings in

execution of a decree. See : Venkatachalam Chetti v. Ramaswamy Servai and others AIR 1932 Mad 73; Evuru Venkata Subbayya Vs. Srishti

Veerayya and Others, ; Gopal Chandra Naskar Vs. Hiranya Prova Moulick and Others, : Budh Singh and Others Vs. 8th Additional District

Judge, Meerut and Others, .

(12) It is obvious, on a perusal of the first impugned order, that the Court laboured under the erroneous impression that the proceedings before it

abated"" because the legal representatives of the deceased decree holder had not come forward till then to continue the proceedings. It must,

however, be mentioned that the Court was right in holding that the erstwhile attorney of the decree-holder had no authority to continue the

proceedings after her death. Since no one had come forward up to that stage to be substituted in place of the deceased decree-holder, it would

have been appropriate for the Court to dispose of the proceeding as infructuous inasmuch as it would have been not fruitful to proceed further

unless someone came forward as a legal representative of the deceased decree-holder. But, this is not what the Court did. Instead, it proceeded to

dismiss the proceedings in execution under the mistaken belief that the same had abated. The Court had no jurisdiction to do so.

(13) The second impugned order also suffers from the same vice. On this occasion, the Court dismissed the application of the petitioners to set

aside the earlier order.