MANU/BH/0208/2009

Equivalent Citation: AIR2009Pat168, 2009(5)CTC673, 2009(3)PLJR697, 2010(1)RCR(Civil)595, 2010(1)RCR(Rent)37

IN THE HIGH COURT OF PATNA

Civil Revision No. 1832 of 2000

Decided On: 21.04.2009

Appellants:**Yogendra Bhagata and Ors.**
Vs.
Respondent:**Pritlal Yadava and Ors.**

Hon'ble Judges/Coram:
J.B. Koshy , C.J., Kishore Kumar Mandal and Dr. Ravi Ranjan , JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: S.S. Dwivedi, Sr. Adv., Ravi Shankar Dwivedi, L.L. Pandey, R.K. Dubey and S.K. Dwivedi, Advs.

For Respondents/Defendant: S.N. Roy, Sr. Adv. and Dronacharya, Adv.

JUDGMENT

Ravi Ranjan, J.

1. A Division Bench of this Court vide its order dated 12.01.2004 has referred this civil revision for consideration by the Full Bench on the question as to whether on the death of plaintiff No. 12/respondent No. 12 during the pendency of the title appeal filed by the defendants 2nd party against the decree of the trial court, in view of the fact that no application was made within the stipulated period prescribed by law of limitation for substitution of the heirs and legal representatives, the whole appeal had abated or not.

2. Title Suit No. 54 of 1989 was filed by the plaintiffs-respondents-petitioners against the defendants-appellants-opposite parties and the same was decreed on 20.05.1994. The defendants 2nd party preferred Title Appeal No. 9 of 1994. During the pendency of the aforesaid appeal, respondent No. 12 (plaintiff No. 12) was reported to have died. However, a controversy arose with regard to the date and place of the death of the aforesaid respondent, as according to the appellants, he died some time in January 1994, that is, during the pendency of Title Suit No. 54 of 1989 itself, whereas, according to the plaintiffs-respondents 1st party, the death took place on 12.10.1994, that is, during the pendency of the title appeal aforesaid. The matter was sent to the trial court for inquiry and after such inquiry the trial court reported that plaintiff No. 12/respondent No. 12, Ram Pravesh Bhagata, died on 12.10.1994. The report aforesaid was challenged in C.R. No. 1062 of 1996, which was disposed of with observation that it would be open for the aggrieved party to raise the objection against the report in the title appeal concerned itself. The matter of substitution vice deceased respondent No. 12 was considered and decided by the first appellate court on 30.08.1997, which held that respondent No. 12 died on 12.10.1994 during pendency of the appeal and as such, the whole appeal stood abated. The aforesaid decision of the first appellate court was challenged by the appellants in Miscellaneous Appeal No. 379 of 1997. A single Bench of this Court while disposing of the aforesaid

appeal had upheld the report of the trial court with regard to the factum of the date of death of plaintiff No. 12/respondent No. 12 and had further found that steps for substitution were not taken within time. However, it further observed as under:

> It is not in dispute that the plaintiffs claiming to be co-owners of Schedule II lands filed the suit to obtain possession thereof, which was decreed. Here it was not a case, where one of the appellants died against whom there was a joint decree along with other appellants. Further it is well settled that the definition of legal representative was inclusive in character and its scope was wide and was not confined to legal heirs only, instead it postulated persons who may or may not be heirs, competent to inherit the property of the deceased, but they should represent the estate of the deceased person. It is not in dispute that the other brothers of the deceased respondent No. 12 were already on record, having joint interest, who had been intermeddling with the properties of the deceased.

3. Upon the aforesaid observation, the impugned order was set aside and the matter was remitted back to the first appellate court to reconsider the question as to whether the whole appeal will abate for non-substitution of the heirs and legal representatives of deceased respondent No. 12.

4. After remand on the issue of abatement of appeal, the lower appellate court considered the issue in detail and held that in the facts and circumstances of the case on the death of the plaintiff-respondent No. 12, right to sue survives to the surviving plaintiffs, and, thus, the appeal will not abate as a whole.

5. The plaintiffs-respondents-petitioners aggrieved by the aforesaid order dated 31.08.2000 passed by the 1st Additional District Judge, Khagaria, in M.T.A. No. 9 of 1994 has preferred this civil revision.

6. The matter was considered by a learned single Judge of this Court. Learned Single Judge referred the matter to the Division Bench of this Court. Before the Division Bench of this Court, learned Counsel for the petitioners placed reliance on **Municipal Council, Mandsaur v. Fakir Chand and Anr.** MANU/SC/0281/1997 : (1997) 3 SCC 500 and **Leelabai (Smt) v. Rajaram and Anr.** MANU/SC/1268/1998 : (1998) 8 SCC, 543 **(both rendered by two Judges Bench of the Supreme Court)**, and had contended that the whole appeal would abate, whereas learned Counsel for the opposite parties while placing reliance on **Johan Oraon (Ekka) and Anr. v. Sitaram Sao (Bhagat) and Ors. reported in** MANU/BH/0007/1964 : AIR 1964 Patna, 31 (Division Bench), **Ram Niranjan Das and Anr. v. Loknath Mandal and Ors. reported in** MANU/BH/0001/1970 : AIR 1970 Patna, 1 (Full Bench) and the decision of the Constitution Bench of the Apex Court rendered in **Sardar Amarjit Singh Kalra (dead) and Ors. v. Smt. Pramod Gupta (Smt.) (dead) and Ors. reported in** MANU/SC/1214/2002 : (2003) 3 SCC, 272, had contended that despite death of one of the co-owners, the remaining co-owners represent the estate of the deceased, and thus, the whole appeal will not abate. The Division Bench was of the view that the matter required consideration by the larger Bench of this Court in light of the judgment rendered by the Supreme Court in the aforesaid cases relied upon by learned Counsel for the parties, and thus, had referred this matter for consideration by a Full Bench of this Court.

7. Heard Shri S.S. Dwivedi, learned senior counsel for the petitioners, and Shri S.N. Roy, learned senior counsel for the opposite parties.

8. It is contended on behalf of the petitioners that the appeal has abated as against the deceased respondent No. 12 as no step for substitution of his heirs and legal representatives was taken by the appellants within time. The interest of each of the plaintiffs was distinct and separate and they had joined together to institute a suit against the stranger, being interested to the extent to their respective shares only. Therefore, one of the plaintiffs cannot represent the estate of the other plaintiff. The decree being indivisible and inseparable one, the appeal against such plaintiff for the aforesaid reason will abate as a whole. Further submission is that the first appellate court's finding that the brothers being already on record as plaintiffs, and being intermeddlers to the estate of the plaintiff-respondent No. 12, would represent his estate, is wholly erroneous inasmuch as in the presence of Class I heirs, the brothers cannot be held to be legal representatives of the deceased. In support of his submissions, learned Counsel for the petitioners drew attention of this Court towards the averments made in paragraph 5 of the plaint in Title Suit No. 54 of 1989. For proper consideration of the stand of the petitioners, it would be apt to quote paragraph 5 of the plaint, which is as follows:

> 5. That plaintiffs Nos. 1 to 15 are all separate and each of them are Kartas of their respective joint Hindu Mitakshara Family and have brought this suit in that capacity besides in their individual capacity. Defendants Nos. 1 to 6 are all separate and each are Kaertas and Representatives of their respective separate Hindu Mitakshara Family. Similarly Defendants Nos. 7 to 9 each are Kartas and Representatives of their respective Joint Mitakshara Family and have been sued in that capacity besides in their individual capacity. Defendants Nos. 11 to 13 are also Kartas of their respective joint Hindu Mitakshara Family and have been sued in that capacity besides in their individual capacity. Similarly Defendants Fourth Party are joint and Asharfi Yadava Defendant No. 15 is the Karta of his joint Hindu Mitakshara Family.

9. It has been canvassed by learned Counsel for the petitioners that it is apparent from the aforesaid pleadings that each of the plaintiffs and the defendants are separate from each other and are Kartas and representatives of their separate Hindu Mitakshara family. Thus, according to the petitioners, one plaintiff cannot be held to be intermeddler to the estate of other and also cannot be held to be a legal representative of the deceased plaintiff-respondent No. 12.

10. In support of his aforesaid submissions, learned Counsel for the petitioners placed reliance upon a decision of the Apex Court rendered in **Satguru Sharan Shrivastava v. Dwarka Prasad Mathur (dead) through L.Rs. and Ors. reported in** MANU/SC/0965/1996 : AIR 1996 SC, 3504, wherein the Supreme Court in a suit to avoid a decree passed in previous suit on the ground of fraud, on the death of a judgment debtor in the previous suit (defendant No. 1 in the present suit) held that the suit against him got abated as none of the legal representatives was brought on record. Thus, it has been held that as a consequence of aforesaid, the decree in the previous suit against defendant No. 1 therein has become final. Further, legality of that decree against the other defendants (decree holder in that suit), if given in present suit, would become inconsistent with the decree as against the first defendant. As a result, the subsequent suit was held to have abated as a whole. The petitioners have strongly relied upon a decision of the Supreme Court in **Municipal Council, Mandsaur (supra)** also. In the aforesaid case, on the death of one of the defendants, it has been held by the Supreme Court that the whole appeal abates. In yet another decision, cited on behalf of the petitioners, in **Leelabai (supra)** the Supreme Court has set aside the appellate decree passed by the High Court holding

that upon death of a minor, father was not competent to pursue the appeal. The appeal became incompetent on account of non-substitution of the mother of the minor, who figures as Class I heir under the Hindu Succession Act. The petitioners further placed reliance upon a decision of the Apex Court rendered in **Badni (dead) by L.Rs. and Ors. v. Siri Chand (dead) by L.Rs. and Ors. reported in** MANU/SC/0106/1999 : AIR 1999 SC, 1077. It is contended that in the aforesaid case before the Apex Court several appeals were preferred against a decree in a suit for possession by way of redemption. It has been held that in the event of the death of one of the appellants in one appeal and failure to bring his legal representatives on record would result in abatement of other appeals also as the decree was passed on common issue against the appellants in all appeals.

11. Learned Counsel appearing on behalf of the opposite parties, in reply, contended that the suit was for recovery of possession of the plaintiffs from the trespassers. There is clear cut averment in the plaint that the plaintiffs, though are separate, but cultivation of Schedule II property is joint amongst them and the plaintiffs use to get their share of produce according to their respective shares and interest in the suit land. Thus, their status is of co-owners (not coparceners of joint family). Contention is that one co-owner can represent another in a suit for recovery of possession from trespassers. In support of his submissions, learned Counsel placed reliance upon a decision of this Court in **Sankru Mahto and Ors. v. Bhoju Mahato and Ors. reported in** MANU/BH/0073/1935 : AIR 1936 Patna, 548 (Division Bench). To establish that in a suit by joint owners for ejecting trespassers, on account of death of one of the plaintiffs, suit will not abate in toto, the opposite parties have relied upon a decision rendered by Division Bench of this Court in **Johan Oraon (supra)** and a Full Bench decision of this Court in case of **Ram Niranjan Das and Anr. v. Loknath Mandal and Ors. reported in** MANU/BH/0001/1970 : AIR 1970 Patna, 1. It is further contended that though the plaintiffs are separate with regard to Schedule II property, since cultivation of the land is still joint and each of the plaintiffs gets the produce as per his share and in that manner they intermeddle with each other. On that account also, as contended, one plaintiff can represent another. Lastly, it is submitted that all the plaintiffs are full brothers. Thus, being the Class II heirs, one brother could represent the other in this suit. Learned Counsel for the opposite parties drew the attention of this Court towards the provisions under Order XXII of the Code of Civil Procedure (hereinafter to be referred to as "Code"). It is contended that the word "legal representative" has been used therein, which stands defined in Section 2(11) of the Code, which also includes any person, who intermeddles with the estate of the deceased. Learned Counsel lastly relied upon a Constitution Bench decision of Supreme Court in **Sardar Amarjit Singh Kalra and Ors. (supra)**.

12. For better appreciation of the matter, it would be apt to quote paragraph 12 of the plaint, which is as under:

> 12. That though all the plaintiffs are separate but cultivation of land of Schedule--'II' of this plaint is joint among the plaintiffs and each of the plaintiffs get their share of produce according to their share and interest in the suit-land (land of Schedule--'II') of the plaint.

13. The pleadings of the plaintiffs unequivocally show that the plaintiffs are jointly cultivating the lands in dispute and thereby it is crystal clear that all the remaining plaintiffs have intermeddled with the estate of deceased plaintiff No. 12, who had an interest in the lands measuring 1 bigha 5 kathas bearing Zamabandi No. 226 despite existence of widow, son and daughter of deceased plaintiff No. 12/respondent No.

12.

14. This stands well settled by the Supreme Court in **Gur Narain Das v. Gur Tahal Das reported in** MANU/SC/0078/1952 : AIR 1952 SC, 225 (paragraph 10) and **Mohd. Bagar v. Nainur Nisa Bibi** MANU/SC/0125/1955 : AIR 1956 SC, 548 (paragraph 7) that possession of one co-owner is possession on behalf of all unless ouster is pleaded and proved. The second judgment was rendered by a Three Judges Division Bench of the Supreme Court.

15. The relevant provision under Order XXII of the Code is that where one of the two or more plaintiffs or defendants dies and the right to sue does not survive against the surviving plaintiffs or the defendants and the legal representatives of the deceased plaintiff or defendant are not made party within the time limited by the law, the suit shall abate against the deceased plaintiff or defendant.

16. This issue came for consideration before a Division Bench of this Court in **Sankru Mahto (supra)**. This Court in its aforesaid decision had held that the test whether a right to sue survives in the surviving plaintiffs or against the surviving defendants is whether the surviving plaintiffs can alone sue or the surviving defendants could alone be sued in the absence of the deceased plaintiff or the defendant, respectively.

17. In the case in hand, suit was filed to obtain possession from the trespassers. A Division Bench of this Court in the decision rendered in **Johan Oraon (supra)** has held that a suit by one of joint owners to obtain possession by ejecting a trespasser is maintainable even though other joint owners have not been impleaded as parties to the action. It is further held therein that in a case of this nature, the Court can proceed with the suit or appeal even when one of the joint owners dies and his heirs are not brought on the record. This view was upheld in a decision by a Full Bench of this Court in **Ram Niranjan Das (supra)**. In the aforesaid decision, this Court has held that a co-owner alone can institute a suit for recovery of possession of land held by him along with other persons against a trespasser, who had dispossessed all the co-owners and obtain a decree for recovery of possession of entire area, however, the rights of other co-owners would remain intact.

18. The judgment in **Municipal Council (supra)** strongly relied upon by the learned Counsel for the petitioners is of no help. The Supreme Court in that case has held the decision of the Madhya Pradesh High Court as not erroneous, which decided that the second appeal filed by the Municipal Council stood abated in view of the fact that the legal representatives of one of the co-owners were not brought on the record when the appeal was pending before the lower appellate court. Facts and points urged in the **Municipal Council (Supra)** and this case are entirely different and each case has to be decided on the basis of its own factual backgrounds and points urged.

19. I also note the following circumstances why the ratio of the above decision in Municipal Council case (supra) is not applicable on the facts of this case. The Supreme Court in **Gur Narain Das and Anr. v. Gur Tahal Das and Ors. reported in** MANU/SC/0078/1952 : AIR 1952 SC, 225 **and Mohammad Baqar and Ors. v. Naimun-Nisa Bibi and Ors. reported in** MANU/SC/0125/1955 : AIR 1956 SC 548, held that possession of one co-sharer is possession on behalf of all. That question was not raised and canvassed seriously in **Municipal Council Case (Supra)**.

Secondly, on the facts of this case it can be seen that from the statement made in the plaint it could not be definitely held that the property was a coparcenary property,

which could be represented by a Karta. Here in the instant case, according to the plaintiffs themselves, the property was acquired by Tilak Bhagat, who was the Karta and Manager of the joint family, which was partitioned and thus, all the plaintiffs had become co-owners and that property even thereafter remained under their joint cultivation.

Thirdly, the status of an intermeddler, as envisaged in Section 2(11) and Order XXII of the Code, was not an issue canvassed, argued and considered in the **Municipal Council case (Supra)**. It would be apt to quote Section 2(11) of the Code, which is as under:

> 2(11) "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 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.

Fourthly, the Supreme Court in **Andhra Bank Ltd. v. R. Srinivasan and Ors. reported in** AIR 1962, 232 (three Judges Division Bench), itself has held that legal representative is "a person who in law represents the estate of a deceased person". Estate does not mean the whole of the estate. Even a legatee who obtains only a part of the estate of the deceased under a Will can be said to represent his estate and is, therefore, a legal representative under Section 2(11) of the Code (includes intermeddlers).

Fifthly, in **Mahabir Prasad v. Jage Ram and Ors. reported in** MANU/SC/0010/1971 : AIR 1971Supreme Court, 742, it has been held that the person jointly interested in decree has been made a party respondent and on his death his heirs have not been brought on record, does not per se divest the appellate court of its jurisdiction to pass decree in appeal. When a party respondent in an appeal dies and one of his legal representatives is already on record in another capacity the appeal does not abate even though no application is made to bring them on record.

Sixthly, in another decision in **Harihar Prasad Singh and Ors. v. Balmiki Prasad Singh and Ors. reported in** MANU/SC/0008/1974 : AIR 1975 SC 733, the Supreme Court has held that where each one of the plaintiffs could have filed a suit for his share, mere fact that all of them joined together as plaintiffs and filed one suit does not mean that if for one reason or other the suit of one of them fails or abates the suit of the others also fails or abates. The decree is in substance the combination of several decrees in favour of several plaintiffs. If in an appeal against the decree one of the plaintiffs is not added as a respondent, it only means that the decree in his favour cannot be set aside or modified even if the appeal succeeds against other plaintiffs in respect of their interest. There would, in that case, be no conflict between the decrees as the decree is a combination of several decrees.

Seventhly, in **Neelavathi and Ors. v. N. Natarajan and Ors. reported in** MANU/SC/0020/1979 : AIR 1980 Supreme Court, 691, the Supreme Court held that position of one co-owner is possession of all.

Lastly, in **Custodian of Branches of Banco National Ultramarino v. Nalini Bai Naique reported in** MANU/SC/0149/1989 : 1989 Supplementary Vol. II SCC, 275, it has been held that the definition of "legal representative" 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 can 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. If there are many heirs, those in possession of bona fide, without there being any fraud or collusion, are also entitled to represent the estate of the deceased.

20. Similarly, the decision of the Supreme Court in **Leelabai (Smt.) (supra)** is also not applicable in this case, as in the aforesaid case, a minor's property was sold through his father as guardian and the father in reverse acting as guardian filed a suit on behalf of the minor against the vendee for return of property propounding a different nature as to the transaction. The suit was dismissed and appeal was preferred. During the pendency of the appeal the minor died and since his mother was alive and was not brought on record, the Supreme Court has held that though the father was pursuing the appeal as guardian of the minor and was also a natural heir, in that case mother being Class I heir ought to have been impleaded as a party upon death of the minor and in absence of that the judgment and decree of the High Court deciding the appeal was set aside. The facts of the case in hand are entirely on different footing. In the present case, brothers being the co-owners, though separate, are enjoying joint cultivation of the suit property. As has been held by the aforesaid decisions, even one of the co-owners can bring a suit for obtaining possession from trespassers.

21. The decision of the Supreme Court relied upon by the petitioners in **Satguru Sharan Shrivastava (supra)** is also not applicable in the facts of this case, as in the aforesaid case a suit was filed to avoid the decree passed in the previous suit on the ground of fraud and also on the facts that it was a collusive one. Decree-holders and judgment-debtors of the previous suit were made defendants. The Supreme Court held that upon death of one of the judgment-debtor of the previous suit (defendant No. 1 in the present suit), during the pendency of the present suit will abate on account of non-substitution of the legal representatives because as a consequence of his death the decree in previous suit against him has become final and legality of that decree against second defendant (decree holder in that suit), if given in the present suit, would become inconsistent with decree as against first defendant. As a result, it was held that the subsequent suit would abate as a whole. However, since in the case in hand the suit was for obtaining possession by ejecting the trespassers, thus, the test would be different, as has been held by various decisions discussed earlier.

22. The decision rendered by the Supreme Court in **Badni (dead) (L.Rs.) and Ors. (supra)** is also distinguishable on facts. In the aforesaid case several appeals were preferred against a decree of suit for possession by way of redemption. It was held that on death of one of the appellants pending various appeals against the decree before the High Court, decree being based on common issue against the appellants in all appeals, failure to bring legal representatives of the deceased-appellants in one appeal would result in abatement of other appeals and thus, the order of the High Court dismissing all the appeals as abated so as to avoid conflicting decrees was held to be proper by the Supreme Court. In the present case, facts are different, as has been discussed above, and the same are not required to be reiterated.

23. A Constitution Bench of the Supreme Court in a decision rendered in **Sardar Amarjit Singh Kalra and Ors. (supra)** has thoroughly examined and decided the issue of abatement considering almost all previous leading pronouncements on the

matter. It has been held therein that when separate claims having no conflicting interest, inter se, were jointly considered by a Court of Law and a single judgment or decree was passed, it would be treated as a combination of several decrees. In such case, death of some of the appellants would not result in abatement of entire appeal. It has been further held that the procedure under Order XXII of the Code should be liberally construed so as to serve as a hand made justice. It should be construed as a flexible tool of convenience with a view to do real, effective and substantive justice. In case of death of some of the appellants during the pendency of the appeal, courts should allow the application for bringing their legal representatives on record even if filed belatedly. As far as possible, courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby render the rights themselves otiose, ubi jus ibi remedium (where there is right there is remedy) being a basic principle of jurisprudence. The Supreme Court has laid down guidelines for testing the question of joint, several, severable or inseverable decrees and the question of abatement. It would be apt to quote the relevant passage of the aforesaid decision in this regard, which 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 a single litigation to vindicate their rights, the decree 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 proceedings, as the one now before us, under the Land Acquisition At or in similar nature of proceedings and/or claims in 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.
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> (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 in competent 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-Ã -vis the remaining

> parties would suffer the vice of contradictory or inconsistent decrees. For that 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.

24. It would not be out of context to refer to a Full Bench decision of this Court rendered in **Sudama Devi and Ors. v. Yogendra Choudhary and Ors. reported in** MANU/BH/0024/1987 : 1987 PLJR793, wherein it has been held that even an intermeddler to the estate of the deceased can represent him as his legal representative as per the wide spectrum definition of legal representative, provided in Section 2(11) of the Code.

25. In view of the aforesaid discussions, there is no reason for this Court to depart from the cursus curiae on this matter. Thus, it is held that in an appeal arising out from a decree passed in a suit for obtaining possession by ejecting trespassers, if one of the co-owner-respondents (plaintiffs) dies during the pendency of the appeal then in presence of the other co-owners-plaintiffs, the whole appeal would not abate. Additionally, I also hold that the definition of word "Legal Representative" as provided under Section 2(11) of the Code is inclusive in character and its scope is wide. It is not confined to a preferred class of heirs only but also includes even intermeddlers. In the present case, apart from being co-owners, some of the plaintiffs are brothers also and even if they are Class II heirs, they being intermeddlers to the estate of deceased, in the facts and circumstances of the case, represent him. Therefore, on this account also there is no question of abatement of the entire appeal. Thus, the question referred to the Full Bench stands answered accordingly.

26. As a result, this Civil Revision fails and hence is dismissed. However, there shall be no order as to costs.

J.B. Koshy, C.J.

27. I agree

Kishore K. Mandal

28. I agree