

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1271 of 2024**

1. Binod Rani Agrawal W/o Late Awadhesh Kumar Das Resident of 504, A Block, White House Apartment, Buddha Marg, Patna.
2. Hemant Kumar Das S/o Late Awadhesh Kumar Das Resident of 504, A Block, White House Apartment, Buddha Marg, Patna.
3. Sumant Kumar Das S/o Late Awadhesh Kumar Das Resident of 504A, Block, White House Apartment, Buddha Marg, Patna.

... .. Petitioner/s

Versus

Smt Rinki Kumari @ Rinki Devi W/o Shri Kishore Yadav @ Kishore Prasad
Resident of Sakin Badi Mohalli, Thana Muffasil, District-Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nikhil Kr. Agwawal, Adv.
Mr. Yash Sahay, Adv.
For the Respondent/s : Mr. Raghav Prasad, Adv.
Mr. Gunsagar Mahto, Adv.

**CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT**

Date : 21-01-2026

Present Civil Misc. has been preferred to set aside the order dated 19.07.2023, passed in Title Suit No. 77 of 2017 whereby and whereunder the learned Sub Judge I, Munger has allowed the substitution petition, filed by the plaintiff/respondent under Order XXII Rule 4 of the Code of Civil Procedure without application of judicial mind.

2. As per respondent's case, the plaintiff/ respondent (mortgagee) asked again and again to Shri Awadhesh Kumar



Das (mortgagor) to return the loan amount and take back the suit property but he completely refused and hence, lastly he filed the said Title Suit No. 77 of 2017 for declaration of right title and interest over the suit property. Learned counsel for the petitioners submits that respondent/plaintiff has filed a Title Suit, bearing No. 77 of 2017, in the Court of learned Sub Judge I, Munger regarding the property mortgaged by Shri Awadhesh Kumar Das (since deceased) in favour of respondent by registered mortgaged deed, dated 26.05.2014.

3. Learned counsel for the petitioner submits that from a plain reading of Order XXII Rule 4 of the Code it clearly transpires that this provision applies only where the death of one of the several defendants, or of the sole defendant, occurs during the pendency of the suit. If a defendant has already expired prior to the institution of the suit, his legal representatives cannot be brought on record under Order XXII Rule 4 CPC. Therefore, in the present case, the substitution petition under Order XXII Rule 4 was not maintainable in law, and the suit itself was liable to be



rejected at the very threshold.

4. To buttress his argument, learned counsel for the petitioner placed reliance on the judgment of Orissa High Court, passed in **Cuttak Municipality vs. Shyamsundar Behera [AIR 1977 Orissa 137]** has held that a suit filed against a dead person is a nullity and no substitution can be made in place of the original defendant who was dead on the date of institution of the suit. In support of his averments that Awadhesh Kumar Das died on 27.09.2015 in Indira Gandhi Institute of Medical Science (IGIMS), Sheikhpura, Patna, he has annexed the document like Annexure P/1, which is death certificate issued by IGIMS.

5. Learned counsel for the respondents opposed the contention of the petitioner/defendant but he has not produced any cogent and relevant document regarding this fact that original defendant Awadhesh Kumar Das was alive at the time of filing of this case and date of death of Shri Awadhesh Kumar Das as contended by the petitioner is false.

6. From perusal of death certificate issued by IGIMS, patna, it clearly shows that Awadhesh Kumar Das has already



died on 27.09.2015 while the suit was filed in the year 2017 being Case No - Title Suit No. 77 of 2017. So, obviously, the case was filed against the dead person i.e. Awadhesh Kumar Das. So, impugned order is contrary to the specific statutory provision of law.

7. Hence, the impugned order dated 19.07.2023, passed in Title Suit No. 77 of 2017 is set aside in view of the above provision of C.P.C. as well as judgment passed in the case of **Cuttak Municipality vs. Shyamsundar Behera [AIR 1977 Orissa 137]**.

8. Accordingly, present Civil Misc. No. 1271 of 2024 stands allowed.

(S. B. Pd. Singh, J)

Nirajkr/-

AFR/NAFR	AFR
CAV DATE	04.09.2025
Uploading Date	21.01.2026
Transmission Date	NA

