**ORDER XXII**

**DEATH, MARRIAGE AND INSOLVENCY OF PARTIES - RULE 1, 2, 3, 4, 5, 6 OF CODE OF CIVIL PROCEDURE 1908**

What is the meaning of No abatement by party's death if right to sue survives?

 What is the Procedure where one of several plaintiffs or defendants dies and right to sue survives?

What is the Procedure in case of death of one of several plaintiff or of sole plaintiff?

What is the Procedure in case of death of one of several defendants or of sole defendant?

What is Determination of question as to legal representative? What is the meaning of No abatement by reason of death after hearing?

Rule 1, 2, 3, 4, 5 and 6 of Order XXII of Code of Civil Procedure 1908

No abatement by party's death if right to sue survives, Procedure where one of several plaintiffs or defendants dies and right to sue survives, Procedure in case of death of one of several plaintiff or of sole plaintiff, Procedure in case of death of one of several defendants or of sole defendant, Determination of question as to legal representative and No abatement by reason of death after hearing are defined under Rule 1, 2, 3, 4, 5 and 6  of Order XXII of Code of Civil Procedure 1908. Provisions under these Rules are:

**Rule 1 Order XXII of Code of Civil Procedure 1908 "No abatement by party's death if right to sue survives"**

The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives

**Rule 2 Order XXII of Code of Civil Procedure 1908 "Procedure where one of several plaintiffs or defendants dies and right to sue survives"**

Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to the effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

**Rule 3 Order XXII of Code of Civil Procedure 1908 "Procedure in case of death of one of several plaintiff or of sole plaintiff"**

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative, of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

**Rule 4 Order XXII of Code of Civil Procedure 1908 "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 part 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.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of. any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may. in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.

**4A. Procedure where there is no legal representative**
(1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court-

(a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.

**Rule 5 Order XXII of Code of Civil Procedure 1908 "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.

**Rule 6 Order XXII of Code of Civil Procedure 1908 "No abatement by reason of death after hearing"**

Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason. of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.