



2026:AHC:78909

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**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**MATTERS UNDER ARTICLE 227 No. - 1563 of 2026**

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| Ashish Kumar Agrawal                           | Versus | .....Petitioners(s) |
| Shri Chitrakoot Ramlila<br>Samiti And 2 Others |        | .....Respondents(s) |

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| Counsel for Petitioners(s) | : Ashok Kumar Upadhyay, Triloki Nath |
| Counsel for Respondent(s)  | : Ritvik Upadhya                     |

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**Court No. - 35**

**HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.**

1. Heard Sri Triloki Nath Tiwari, learned counsel for the petitioner and Sri Vinod Kumar Upadhya, learned Senior Counsel appearing along with Sri Ritvik Upadhya, learned counsel for the respondents.
2. The present petition calls in question the orders dated 26.11.2025, 18.07.2023, and 18.02.2021 passed in Small Causes Suit No. 18 of 2014. The principal relief sought is the setting aside of the substitution order dated 18.02.2021, whereby only the petitioner alone was impleaded as the legal heir of the deceased tenant, along with a consequential direction to implead all the legal heirs of the deceased defendant.
3. The factual matrix, in brief, is that the plaintiff–respondent instituted Small Causes Suit No. 18 of 2014 seeking eviction, recovery of arrears of rent, and damages in respect of the disputed non-residential premises. The original defendant, Krishna Gopal Gupta, contested the suit by filing a written statement during his lifetime.

4. During the pendency of the suit, the original defendant expired on 14.02.2019. Thereafter, the plaintiff filed a substitution application dated 22.08.2019, pursuant to which the present petitioner, Ashish Kumar Agarwal, came to be impleaded as the sole legal representative of the deceased defendant by order dated 18.02.2021.

5. Subsequently, on account of non-appearance, the trial court proceeded *ex parte* against the defendants by order dated 27.04.2022. Upon acquiring knowledge of the said proceedings, the petitioner filed a recall application seeking recall of both the substitution order dated 18.02.2021 and the *ex parte* order dated 27.04.2022, *inter alia*, on the ground that all the legal heirs of the deceased defendant had not been impleaded and that proper service had not been effected.

6. The trial court, by order dated 18.07.2023, partly allowed the recall application by setting aside the *ex parte* proceedings dated 27.04.2022; however, it declined to recall the substitution order dated 18.02.2021. The revision preferred thereagainst was dismissed by the revisional court on 26.11.2025, affirming the view taken by the trial court.

7. Aggrieved by the aforesaid orders, the petitioner has instituted the present petition invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

8. Learned counsel for the petitioner has vehemently contended that the courts below have committed a manifest error of law in permitting the suit to proceed without impleading all the legal heirs of the deceased tenant, late Krishna Gopal Gupta. It is submitted that upon the death of the original tenant, the tenancy rights devolved upon all his legal heirs in accordance with the provisions of the Hindu Succession Act, 1956, and consequently, each of them acquired a joint and indivisible interest in the tenancy.

9. It is further contended that the non-impleadment of the widow, Smt. Neelam Agarwal, as well as the daughters of the deceased tenant, renders the proceedings fundamentally defective, inasmuch as they are

necessary and proper parties whose rights stand directly affected by any decree of eviction. It is urged that failure to implead all such heirs results in denial of opportunity of hearing and constitutes a clear infraction of the principles of natural justice.

10. Placing reliance upon ***Gauri Shankar Gupta v. Anita Mishra and another*<sup>1</sup>**, ***Lalit Kumar v. Neel Kantheshwar and others*<sup>2</sup>**, and ***Textile Association (India) Bombay Unit v. Balmohan Gopal Kurup and another*<sup>3</sup>**, it is submitted that although the legal heirs of a deceased tenant succeed as joint tenants, the principle that one joint tenant may represent the entire body of co-tenants cannot be applied in a rigid or mechanical manner so as to defeat the substantive rights of other co-tenants.

11. It is further submitted that the supplementary affidavit filed before this Court demonstrates that Smt. Neelam Agarwal has become the proprietor of the business being carried on from the disputed premises, as evidenced by GST registration, and therefore has a direct and substantial interest warranting her impleadment.

12. Per contra, learned counsel for the respondents has supported the impugned orders and submitted that the petitioner is the sole person in possession and effective control of the tenanted premises and is adequately representing the tenancy.

13. Reliance has been placed upon ***Suresh Kumar Kohli v. Rakesh Jain and another*<sup>4</sup>** and ***Harish Tandon v. Additional District Magistrate, Allahabad, U.P. and others*<sup>5</sup>**, to contend that tenancy devolves as a joint and indivisible unit, and impleadment of one joint tenant is sufficient.

14. It is further contended that objections regarding non-impleadment raised at a belated stage are liable to be rejected as attempts to delay proceedings.

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1 2003 SCC Online All 1516

2 2006 SCC Online All 498

3 (1990) 4 SCC 700

4 (2018) 6 SCC 708

5 1995 (1) SCC 537

15. Reliance is also placed on ***Binod Pathak and others v. Shankar Choudhary and others***<sup>6</sup> to submit that procedural provisions should advance justice and cannot be invoked belatedly.

16. Further reliance is placed on ***Uday Bhan Tiwari v. Pashupati Colonizers Pvt. Ltd. and others***<sup>7</sup> to contend that impleadment of all co-tenants is not mandatory.

17. In view of the rival submissions advanced by learned counsel for the parties, the issue that falls for consideration before this Court is whether impleadment of only one legal heir or co-tenant of a deceased tenant is sufficient for the continuation of eviction proceedings, or whether all co-tenants are required to be mandatorily impleaded; and further, whether non-impleaded co-tenants may seek impleadment at their own instance during the pendency of such proceedings.

18. The controversy in the present case lies at the intersection of two well-settled principles of law, namely, the nature of devolution of tenancy upon the death of a tenant, and the requirement of representation of the estate of the deceased in pending proceedings. The resolution of the issue requires a harmonious construction of these principles in the context of eviction proceedings.

19. At the outset, it may be noted that in ***Kanta Goel v. B.P. Pathak and others***<sup>8</sup>, it was held that one co-owner sufficiently represents the entire body of co-owners and that non-impleadment of all co-owners does not render the proceedings defective. This principle, though enunciated in the context of co-ownership, has been consistently applied by analogy to tenancy matters.

20. The law relating to succession to tenancy stands authoritatively settled. In ***H.C. Pandey v. G.C. Paul***<sup>9</sup>, it was held that upon the death of the original tenant, the tenancy devolves upon the heirs as a single, indivisible unit, and the heirs succeed as joint tenants. It was further

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6 2025 SCC Online SC 1411

7 2021 SCC OnLine All 272

8 (1977) 2 SCC 814

9 (1989) 3 SCC 77

clarified that there is no division of the premises or rent, and acts done by one heir are deemed to be on behalf of all.

21. The aforesaid position was reaffirmed and clarified in ***Harish Tandon***, wherein the apparent conflict in earlier decisions was resolved by holding that the tenancy does not fragment upon succession. The heirs step into the shoes of the deceased tenant as joint tenants, and the tenancy remains a single, indivisible unit. The Court cautioned that any other interpretation would lead to anomalous consequences, particularly requiring landlords to establish eviction grounds separately against each heir.

22. In ***Ashok Chintaman Juker and others v. Kishore Pandurang Mantri and another***<sup>10</sup>, it was further held that notice to one joint tenant is sufficient, a suit against one is maintainable, and a decree passed therein binds all co-tenants. The Court also emphasized that where other heirs are not in possession or have not asserted independent rights, their non-impleadment does not vitiate the proceedings.

23. The concepts of joint tenancy and tenancy-in-common were considered in detail in ***Suresh Kumar Kohli (supra)***. It was held that the two concepts are distinct in form and substance. A joint tenancy is characterized by unity of title, unity of commencement, unity of interest, unity of possession, and unity of equal shares, coupled with the right of survivorship, thereby creating a single and consolidated tenancy. In contrast, tenancy-in-common is marked by unity of possession alone, without unity of title or interest, and each co-tenant holds a distinct and identifiable share in the estate.

24. It was clarified that while *inter se* the heirs may hold the property as tenants-in-common with separate shares under the law of succession, their position *vis-à-vis* the landlord stands on a different footing. Each such heir, though having a distinct share *inter se*, retains the right to possess the entirety of the tenanted premises, and privity of estate

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10 (2001) 5 SCC 1

continues to subsist between the landlord and each co-tenant in respect of the tenancy.

25. Relying upon the decision in *H.C. Pandey*, it was reiterated that upon the death of the original tenant, the tenancy devolves upon the heirs as a joint tenancy *qua* the landlord, and not as separate or fragmented tenancies. The tenancy thus continues as a single and indivisible unit, and cannot be split or partitioned so far as the landlord–tenant relationship is concerned.

26. Consequently, it is not incumbent upon the landlord to implead each and every legal heir. Impleadment of one or more heirs who are in occupation or otherwise effectively representing the tenancy is sufficient in law. A decree of eviction passed against such joint tenant(s) binds all co-tenants, and objections founded on non-joinder of every heir are untenable, particularly in the absence of proof of separate possession or independent tenancy rights.

27. Before advertng to the rival contentions on merits, it would be apposite to notice the procedural doctrine governing substitution and representation of estate under Order XXII of the Code of Civil Procedure, 1908<sup>11</sup>.

28. It is trite that the requirement in law is one of effective representation and not exhaustive impleadment. This principle constitutes a cornerstone of representative litigation and service of process within civil jurisprudence, striking a balance between the demands of due process and the practical necessity of ensuring that adjudication is not stultified by insistence on impleading every individual having a remote or derivative interest. The doctrine postulates that for a court to pass an effective and enforceable decree, it is not invariably necessary that each and every person having an interest be arrayed as a party; rather, what is essential is that the estate or interest in question is adequately, bona fide, and competently represented by those already on record.

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<sup>11</sup> CPC

29. In the context of Order XXII CPC, upon the death of a party, the requirement is to bring on record the “legal representatives” of the deceased. Where there are multiple heirs, and those who are primarily managing or representing the estate are impleaded in good faith, the estate is, in the eye of law, treated as being sufficiently represented. The provisions of Order XXII are not intended to be construed in a manner that defeats substantive rights; they must receive a pragmatic and liberal construction so as to advance substantial justice rather than to obstruct adjudication on technical grounds. As has been consistently emphasized, if the estate is represented, the non-impleadment of every single heir is not fatal.

30. In this context, a three-fold test has been evolved to determine the adequacy of such representation: (i) bona fide conduct — whether the litigation has been prosecuted or defended honestly and with due diligence by the parties on record; (ii) identity of interest — whether the interest of the non-impleaded party is identical to, and not in conflict with, that of the party representing the estate; and (iii) absence of prejudice — whether the omission to implead a particular heir has resulted in any failure of justice or a distorted or one-sided presentation of the case.

31. If these conditions are satisfied, the non-impleadment of every heir does not render the proceedings defective, nor does it result in abatement. The emphasis thus shifts from a mechanical requirement of exhaustive impleadment to a functional requirement of effective representation, namely, whether the interest of the deceased is being adequately and fairly defended before the Court. So long as such representation exists, the proceedings remain valid and binding, and cannot be invalidated on technical grounds of non-joinder.

32. The petitioner’s contention proceeds on the premise that each legal heir possesses an independent and indivisible right in the tenancy requiring mandatory impleadment. However, such a premise overlooks the settled distinction between tenancy-in-common and joint tenancy. As held in ***Suresh Kumar Kohli***, while heirs may hold rights *inter se* as

tenants-in-common, *vis-à-vis* the landlord, the tenancy remains joint and indivisible.

33. The judgments relied upon by the petitioner, namely ***Gauri Shankar Gupta*** and ***Lalit Kumar***, do not lay down a contrary proposition. They merely recognize that where a co-tenant independently approaches the Court seeking impleadment, such request ought ordinarily to be considered to avoid prejudice. These decisions carve out a limited equitable exception but do not dilute the settled principle that one joint tenant can represent the tenancy.

34. On the other hand, the authorities relied upon by the respondents, including ***Uday Bhan Tiwari*** reaffirm that tenancy devolves as a single, indivisible unit and that impleadment of one joint tenant is sufficient. These decisions also emphasize that in the absence of separate possession or independent tenancy, a decree binds all co-tenants.

35. Further, reliance placed on ***Binod Pathak*** reinforces the principle that procedural provisions must be construed to advance justice and cannot be invoked belatedly to unsettle proceedings. The Court emphasized that parties cannot take advantage of their own omission or delay.

36. The principles laid down in ***Harish Tandon*** and ***Suresh Kumar Kohli*** further fortify the position that occupation or representation by one heir is deemed to be on behalf of all, and that impleadment of every heir is not mandatory. The aforesaid doctrine has also been consistently applied and it has been held that eviction proceedings against one or more joint tenants in possession are maintainable and binding upon all heirs. Thus, upon a holistic examination, it emerges that while co-heirs undoubtedly inherit rights in the tenancy, the law does not mandate their compulsory impleadment in eviction proceedings. The tenancy being joint and indivisible, effective representation by one co-tenant suffices.

37. At the same time, the right of a co-tenant to seek impleadment cannot be ignored. As indicated in ***Gauri Shankar Gupta*** and ***Lalit Kumar***, a co-tenant may, if aggrieved, approach the Court and seek

impleadment. However, such right does not translate into a mandatory obligation upon the landlord or the Court to implead all heirs.

38. It is also well settled that upon the death of a tenant, his heirs succeed as joint tenants, and a decree passed against one joint tenant binds the others. This principle has been consistently applied in eviction jurisprudence.

39. The concept of joint tenancy implies that the tenancy remains a single, indivisible entity. All heirs collectively represent the estate of the deceased tenant, and representation by one is, in law, representation of all.

40. In this context, the object of substitution under Order XXII CPC assumes significance. The purpose is to ensure representation of the estate and not to insist upon mechanical impleadment of all heirs. Where one heir, particularly one in possession and actively conducting business, is on record, the requirement of representation stands satisfied.

41. The distinction between a “necessary party” and a “proper party” is also relevant. A necessary party is one in whose absence no effective decree can be passed. In cases of joint tenancy, one joint tenant is sufficient for passing an effective decree. Other heirs fall within the category of proper parties, whose impleadment is discretionary and not mandatory.

42. From the aforesaid discussion, the following principles emerge:

42.1 Upon the demise of a tenant, the tenancy does not stand fragmented but devolves upon the heirs as a joint and indivisible tenancy, the unity of the tenancy being preserved *vis-à-vis* the landlord.

42.2 Such joint tenancy carries with it the principle of representative possession, wherein any one of the joint tenants in occupation or control of the tenanted premises is deemed, in the eye of law, to represent the entire body of co-tenants.

42.3 Consequently, impleadment of each and every legal heir is not a *sine qua non* for the maintainability or validity of eviction or release proceedings, and non-joinder of some co-tenants does not ipso facto vitiate the proceedings.

42.4 A decree or order passed against one or more joint tenants, particularly those in possession or effectively representing the tenancy, enures to the benefit of and binds all co-tenants, unless a case of distinct, independent, or severed tenancy rights is specifically pleaded and established.

42.5 The test is one of effective and adequate representation of the tenancy and the estate of the deceased, and not of exhaustive or mechanical impleadment of all legal heirs. Where it is established that the tenancy or estate is *bona fide* and competently represented by a person in possession or control, the proceedings cannot be invalidated on technical grounds of non-impleadment. The provisions of Order XXII of the Code of Civil Procedure are to be construed pragmatically and liberally so as to advance substantial justice; in the absence of demonstrable prejudice, non-impleadment of every legal heir is not fatal.

42.6 The burden to establish that a non-impleaded heir was a necessary party by virtue of independent possession or distinct tenancy rights lies upon the person raising such objection, and in the absence of such pleading and proof, the objection cannot be sustained.

42.7 At the same time, the law recognizes that a co-tenant, if so advised, may seek impleadment to safeguard his or her interest, and such impleadment ought ordinarily to be permitted to advance the cause of complete adjudication; however, such permissibility cannot be elevated to a mandatory requirement so as to render proceedings defective in its absence.

42.8 Thus, the jurisprudential distinction lies between what is indispensable and what is merely facilitative—while the presence of all heirs is not a legal necessity, the door remains open for their participation where they choose to assert an interest.

43. The legal position, thus crystallized, may be succinctly stated that upon the death of a tenant, the tenancy devolves upon the legal heirs as a joint and indivisible tenancy, retaining its unity *vis-à-vis* the landlord. In such a situation, any one of the joint tenants who is in possession or otherwise effectively representing the tenancy is deemed in law to represent the entire body of co-tenants. Consequently, impleadment of all legal heirs is not a *sine qua non* for the maintainability or validity of eviction or release proceedings, and proceedings instituted against one or more such joint tenants are maintainable and binding upon all, unless a case of distinct, independent, or severed tenancy rights is specifically pleaded and established. The determinative test is one of effective and adequate representation of the tenancy, and not of formal or exhaustive impleadment. At the same time, a co-tenant, if so advised, may seek impleadment to safeguard his or her interest; however, such a right of participation cannot be elevated to a mandatory requirement so as to vitiate proceedings in its absence.

44. At this juncture, having considered the rival submissions advanced by learned counsel for the parties and the legal principles emanating from the judicial precedents governing the field, it becomes necessary for this Court to examine the controversy in the light of the settled doctrine of joint tenancy and the scope of impleadment of legal heirs in eviction proceedings.

45. At the outset, it is to be noted that both the trial court and the revisional court have concurrently recorded findings of fact that the petitioner, Ashish Kumar Agarwal, was the person actively carrying on the business in the tenanted premises and was in effective control and possession thereof. These findings are findings of fact based on appreciation of evidence and have neither been shown to be perverse nor based on no evidence. On the contrary, they clearly indicate that the tenancy, as a functional and commercial unit, was being effectively represented by the petitioner alone.

46. It further transpires from the record that during the pendency of the suit, the plaintiff had moved an application bringing on record the

death of the original tenant, Krishna Gopal Gupta, and had specifically asserted that the present petitioner, being his legal heir, had succeeded to the tenancy and was carrying on the business from the disputed premises. Significantly, such assertions were not specifically denied or controverted by the petitioner in the recall application subsequently filed by him. The absence of a categorical denial to such material pleadings amounts to an implied admission, thereby reinforcing the conclusion that the petitioner had stepped into the shoes of the original tenant and was effectively representing the tenancy both in possession and in conduct.

47. In the aforesaid factual backdrop, the settled legal principle that heirs of a deceased tenant succeed as joint tenants assumes determinative significance. The doctrine of joint tenancy, as consistently applied in tenancy law, recognizes that the tenancy remains a single and indivisible interest, and representation of such tenancy by one of the co-tenants is, in appropriate cases, sufficient for the purposes of litigation. Consequently, the mere non-impleadment of all legal heirs does not, by itself, vitiate the proceedings, so long as the tenancy is adequately and effectively represented.

48. The revisional court, while affirming the order of the trial court, has rightly relied upon the principle that only those heirs who are actively involved in the tenancy or in the business carried on in the tenanted premises are to be treated as necessary parties. In the present case, it has been specifically found that the widow and daughters of the deceased tenant were neither participating in the business nor shown to be in possession of the tenanted premises. In the absence of any such participation, possession, or demonstrable assertion of independent rights, their impleadment cannot be said to be mandatorily required.

49. The subsequent filing of the supplementary affidavit by the petitioner, asserting that Smt. Neelam Agarwal has been allotted a GST registration and has become the proprietor of the business, does not, *ipso facto*, alter the legal position. Firstly, this assertion pertains to a subsequent development which was neither pleaded nor substantiated before the courts below at the relevant stage when the substitution order

was passed. Secondly, the mere existence of a GST registration, in the absence of cogent material demonstrating actual possession, control, or active conduct of business in the tenanted premises at the relevant point of time, does not conclusively establish that she was a necessary party whose non-impleadment would vitiate the proceedings.

50. More importantly, the law does not mandate that every heir must necessarily be impleaded in an eviction suit. The requirement is of effective representation of the tenancy and not exhaustive or mechanical impleadment. Once it is found that the petitioner was representing the tenancy and has been afforded full opportunity to contest the proceedings on merits after recall of the *ex parte* order, the proceedings cannot be held to be defective merely on account of non-impleadment of other heirs.

51. At the same time, the legal position as elucidated in ***Gauri Shankar Gupta*** and ***Lalit Kumar*** must be harmoniously applied. These decisions lay down that although impleadment of one joint tenant is sufficient in law, a co-tenant who independently approaches the Court seeking impleadment during the pendency of proceedings may ordinarily be permitted to be impleaded, so as to avoid prejudice and ensure complete adjudication.

52. However, a crucial distinction must be maintained. The aforesaid judgments do not lay down that impleadment of all co-tenants is mandatory in every case; rather, they recognize a right to seek impleadment, not a corresponding obligation upon the Court to *suo motu* implead all heirs. In the present case, it is noteworthy that no independent application has been filed by Smt. Neelam Agarwal or any other alleged co-heir seeking impleadment in their own right. The plea for impleadment has been raised only by the petitioner, who is already on record and adequately representing the tenancy. Therefore, the ratio of the aforesaid judgments does not advance the petitioner's case to the extent of rendering the substitution order illegal.

53. In view of the foregoing discussion, this Court is of the considered opinion that the substitution of the petitioner alone as the legal representative of the deceased tenant does not suffer from any legal infirmity. The consistent judicial position clearly establishes that upon the death of a tenant, the tenancy devolves as a joint and indivisible unit, and one joint tenant is competent to represent the entire tenancy. In the facts of the present case, the petitioner has been found to be in effective control and possession of the tenanted premises and has been afforded full opportunity to contest the proceedings on merits. The non-impleadment of other heirs, in such circumstances, cannot be said to vitiate the proceedings or render the substitution order illegal.

54. At the same time, it is equally well settled that while impleadment of all co-tenants is not mandatory, there exists no legal bar for any other heir, if so advised, to approach the Court and seek impleadment for protection of his or her interest. However, such a right cannot be enforced at the instance of the petitioner so as to compel mandatory impleadment of all heirs.

55. In view of the foregoing discussion and the settled legal position, this Court finds no illegality, perversity, or jurisdictional error in the impugned orders dated 18.02.2021, 18.07.2023 (to the extent challenged), and 26.11.2025 passed by the courts below, warranting interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

56. The petition, being devoid of merit, is accordingly **dismissed**.

57. The trial court shall proceed with the suit expeditiously and endeavour to conclude the same, in accordance with law, preferably within a period of **six months** from the date of production of a certified copy of this order, without granting unnecessary adjournments to either party.

58. It is made clear that the observations made in this judgment are confined to the issues raised herein and shall not be construed as an

expression on the merits of the case, which shall be decided independently by the trial court.

**(Dr. Yogendra Kumar Srivastava,J.)**

**April 8, 2026**

Arun K. Singh