

GJGN020089102018

**SPECIAL CIVIL SUIT NO. 205 of 2018****ORDER BELOW EXH. 1**

1. The plaintiff instituted the present suit on 17.08.2018 for seeking cancellation of an agreement to sell and a permanent injunction against the defendants.
2. A perusal of the record reveals that the suit has been posted for recording the plaintiff's evidence since 31.12.2024. However, the plaintiff failed to lead any evidence and repeatedly sought adjournments on one pretext or another. On the last date of hearing, i.e., 20.04.2026, a final opportunity was granted. Today, when the matter was called out, the learned Advocate for the plaintiff moved an application recorded at Exh. 29 seeking an adjournment to bring the legal heirs of the deceased plaintiff on record. Attached with Exh. 29 is a copy of the death certificate, which shows that the sole plaintiff passed away on 25.09.2018 i.e after nearly one month of instituting the present suit. Such application has been rejected on merits. The learned Advocate for the plaintiff has brought this fact to the notice of this Court for the very first

time after a period of almost eight years without any explanation for such prolonged intimation. This conduct of plaintiff's side demonstrates lack of diligence and a total indifference toward the progress of the suit.

3. Further, under Order XXII Rule 3(2) of the Code of Civil Procedure, 1908 (CPC), where no application for substitution of the legal representatives of a deceased plaintiff is made within the period prescribed by law, the suit abates automatically so far as the deceased plaintiff is concerned. In the present case, the sole plaintiff passed away on 25.09.2018, and no application for bringing the legal heirs on record was filed within the statutory period of limitation. Since no order condoning the delay or setting aside the abatement has been passed to date, the statutory consequence prescribed under Order XXII Rule 3(2) CPC takes effect, resulting in the abatement of the suit.

4. The Court has considered the principles laid down by the Hon'ble Supreme Court in *Mithailal Dalsangar Singh v. Annabai Devram Kini* (2003) 10 SCC 691, wherein it was held that while abatement occurs automatically upon failure to substitute legal representatives within the prescribed period, courts should generally adopt a liberal approach while considering an application for setting aside such

abatement. However, in the present case, no formal application seeking condonation of delay or setting aside of the abatement has been moved. Instead, the learned Advocate for the plaintiff has merely filed an adjournment application (Exh. 29) after a unexplained lapse of nearly eight years, without offering any justifiable ground or seeking appropriate legal remedies. Consequently, the benefit of the liberal approach enunciated in *Mithailal* (supra) cannot be invoked, and the statutory abatement continues to operate. Hence, the present court pass the following order in the interest of justice.

:::ORDER:::

- 1.** It is hereby declared that the present suit bearing SPCS No. 205 of 2018 has abated in toto under Order XXII Rule 3(2) of the Code of Civil Procedure, 1908.
- 2.** The proceedings are accordingly terminated.
- 3.** Decree to be drawn in accordance with law.
- 4.** No order as to costs.

Order signed and pronounced in open Court today, on this 10th day of August, 2026.

Date: 10.08.2026 (B. S. Rana)

Place: 2nd Addl. Senior Civil Judge &
Gandhinagar ACJM, Gandhinagar.
UIC: GJ 01471.

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