

ORDER BELOW EXH.207 IN R.C.S.No.215/2004 :

1. The application is under Order XXII, Rule 4 of the Code of Civil Procedure, 1908 for setting-aside the order of abating the suit against the defendant no.5, who died during the pendency of the suit on 26.07.2016. According to the plaintiffs, before 15 days, they came to know about the death of the defendant no.5. Therefore, it is necessary to set-aside the order of abatement of the suit.

2. The defendant nos.10 to 17 objected the application on the premise that the evidence of these defendants are going on. No relief is claimed in the suit against the defendant no.5.

3. Heard both. Perused application, say and record. The fact that the notices are issued to the legal representatives of the defendant no.5 and the same are not yet served. But the question is when the defendant no.5 was a formal party to the suit, since no relief has been claimed against him and he did not contest the suit by filing the written-statement, there is no propriety to take his legal representatives on record. Order 22, Rule 4 (4) of the Code of Civil Procedure, 1908 takes care of this eventuality. As the defendant no.5 was not contesting the suit, it is just to exempt the plaintiffs from bringing his legal representatives on record. Hence, invoking the Order 22, Rule 4 (4) of the Code of Civil Procedure 1908, further order is passed :

ORDER

The application is filed.

Shrigonda.

Date : 09/08/2017.

(H. S. Satbhai)
Civil Judge (Senior Division),
Shrigonda