

**Regular Civil Suit Number 17/2011**  
**CNR Number MHAH-23-000750-2014**

1. Macchindra Kisan Bhade ..... Plaintiffs

Versus

1. Tukaram Dattatray Bhade ..... Defendants

**ORDER BELOW EXHIBIT 96**

1. The suit is for partition. The plaintiffs have filed the application vide exhibit 96 for setting aside abatement order passed against defendant number 2, 3 & 4. The court has called the say of opposite side on application vide exhibit 96. The defendants have filed say and raised strong objection. It is stated that, application is false and reasons are not sufficient. The Plaintiffs are not interested to proceed with the suit. Hence, application vide exhibit 96 is to be rejected.

2. I have perused application vide exhibit 96 filed by plaintiffs for setting aside abatement order passed against defendant number 2, 3 & 4. I have also gone through affidavit at exhibit 97. I have heard both sides. Upon hearing of both sides and on perusal of exhibit 96, the following points arise for my consideration.

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Do plaintiffs entitle to set aside abatement order ?	Yes
2.	What is order ?	The application is allowed.

## REASONS

### As to point number 1 & 2 -

3. The suit is for partition. The defendant number 2 namely Pandurang Dattatray alias Dattu Bhade died on 20-10-2020, defendant number 3 Kerba Dattatray alias Dattu Bhade died on 18-04-2023 and defendant number 4 namely Arjun Dattatray alias Dattu Bhade died on 10-07-2023. The plaintiffs have filed the application vide exhibit 96 for setting aside abatement order passed against defendant number 2, 3 & 4. It is stated that, there is delay to cause legal representatives of defendant number 2, 3 and 4 on record inadvertently. Hence, abatement order is to be set aside.

4. On the other hand, defendants have filed say and raised strong objection. It is stated that, application is false and reasons are not sufficient. The plaintiffs are not interested to proceed with the suit. Hence, application vide exhibit 96 is to be rejected.

5. It is stated in the pursis vide exhibit 90 that, defendant number 3 died on 18-04-2023. On perusal of death certificates vide exhibit 93, 94 and 95, it becomes clear that, defendant number 2 namely Pandurang Dattatray alias Dattu Bhade died on 20-10-2020, defendant number 3 Kerba Dattatray alias Dattu Bhade died on 18-04-2023 and defendant number 4 namely Arjun Dattatray alias Dattu Bhade died on 10-07-2023.

6. On perusal of article 120 of Limitation Act, it appears that application to cause the legal representatives on record is to be made within period of 90 days from date of death. On perusal of article 121 of

Limitation Act, it appears that application to set aside abatement is to be made within period of 60 days from date of abatement. But in the present suit, defendant number 2 is died on 20-10-2020, defendant number 3 is died on 18-04-2023 and defendant number 4 is died on 10-07-2023. Therefore, the application at exhibit 96 is filed on 06-11-2023 along with affidavit stating that, there is delay to cause legal representatives of defendant number 2, 3 and 4 on record inadvertently. Hence, this application cannot be filed within stipulated period. This is the reason for delay. The plaintiffs have sufficient cause which prevented them from making application for causing representatives of defendant number 2, 3 & 4 on record. I have perused order 22 Rule 4(5)(b) of code of civil procedure, 1908. If there is sufficient cause which has prevented plaintiffs from causing legal representatives on record, then it has to be considered by the court. The circumstances are beyond the control of plaintiffs. Hence, it will not be appropriate to saddle the cost on shoulder of plaintiffs for causing delay. In order to enable the court to adjudicate effectively, completely and to settle all the questions involved in the suit, it is necessary to allow the application to cause on record the legal representatives of deceased defendant number 2, 3 & 4. Therefore, the delay is required to be condoned. I have perused order 22 Rule 1 which says that, the death of plaintiff or defendant shall not cause suit to abate if right to sue survives. In present suit right to sue is survived. Hence, the legal representatives of deceased defendant number 2, 3 & 4 are made party to the suit. It is therefore very necessary in the interest of justice to allow the application at exhibit 96. In the result, the following order is passed.

**ORDER**

1. The application vide exhibit 96 is allowed.
2. As the suit is technically abated due to delay for causing the legal representatives of deceased defendant number 2, 3 & 4 on record, the order abatement of suit is hereby set aside.
3. There is no order as to cost, after considering the facts and circumstances of the present suit.

Shrigonda  
Date – 20-11-2023

**Sd/-**  
**Smt. K. A. Katkar**  
Joint Civil Judge (J.D)  
Shrigonda.

**:-CERTIFICATE:-**

I affirm that, the contents of this pdf file order are same, word for word as per original order.

Case No.	:-	R.C.S. No. 17/2011
Name of Stenographer	:-	Smt. S. V. Jadhav
Court Name	:-	Smt. K. A. Katkar, Jt. Civil Judge, J.D, Shrigonda.
Date of Decision	:-	20-11-2023
Order signed by P.O. on	:-	20-11-2023
Order uploaded on	:-	20-11-2023