

MHBU130005772011

**R.C.S. No.39/2011**
Subhadrabai Vs. Jude Kashmir**ORDER BELOW EXH.65**

This is an application filed by legal representatives of deceased plaintiff for bringing on record the legal representatives of deceased plaintiff and under section 5 of Limitation Act for condonation of delay caused in bringing legal representatives of deceased plaintiff on record.

2. It is contention of applicants that during the pendency of the suit, plaintiff namely Subhadrabai Pralhad Dhanve had been demised on 18/07/201. Her husband namely Pralhad Gaunaji Dhanve has already been demised on 05/01/201. Plaintiff has no issue. She also had no real brother and sister. Her mother and father had been demised long back therefore she has no class I Heirs. Applicants namely Shriram Gaunaji Dhanve (Brother of husband of plaintiff), Dattatray Shriram Dhanve (nephew of plaintiff), Pravin Shriram Dhanve (nephew of plaintiff), Anita Shivaji Ubarhande(Niece), Sunita Samadhan Bhoke (Niece), Vanita Santosh Sapkal(Niece) are only the legal heirs of deceased plaintiff. However, her legal representatives could not be brought on record within prescribed limitation as brothers of and delay of 132 days has been caused for bringing legal heirs of plaintiff on record. Valuable suit properties are involved in the suit and therefore it

is necessary to bring legal representative of plaintiff on record.

3. Defendant resisted the application stating that applicants had plaintiff had knowledge of death of plaintiff still they failed to bring on record his legal heirs within limitation. Application is not within limitation therefore heavy cost shall be imposed.

4. Application is supported by affidavit. The application for bringing on record the legal representatives is filed on 10.03.2017 while the plaintiff has demised on 18.07.2016. From the application and affidavit of applicants, it is made clear that, the application is filed after 235 days from date of death of plaintiff. The plaintiff submitted that the delay caused is neither intentional nor deliberate. The plaintiff has not filed on record the application for setting aside the abatement of suit. However, in ***Vasant Jagannath Malkar Teli and Others Vrs. Parvati Ananda Phatak and Others 2013 [1] AllMR 394*** wherein it is held by referring the judgment of ***Mithailal Dalsangar Singh and Others Vrs. Annabai Devram Kohli and Others [2003] 10 SCC 691*** in which Hon'ble Apex Court has propounded that prayer for bringing the legal representatives on record is having the effect of setting aside abatement as the relief of setting aside abatement though not asked for in so many words, is in effect being actually asked for and is necessarily implied. Too technical or pedantic approach in

such cases is not called for. By observing the same, Hon'ble Bombay High Court has set aside the order of rejection of application and heirs of original respondent was allowed to be brought on record.' By observing the guidelines of Hon'ble Apex Court and Hon'ble Bombay High court I extend my discretionary power under section 151 of code of civil procedure to setting aside the abatement of suit.

5. The present suit is filed for declaration of title and for perpetual injunction. Valuable immovable properties are involved in the suit. The rights of legal representatives are involved in the present suit. They need to be brought on record as their legal rights are involved in the present suit. Also, the grievance of defendants in respect of delay can be considered by saddling appropriate costs on the applicants. Cumulatively, it appears that in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit, it is necessary to bring on record the legal representatives of deceased plaintiff and as such, the same deserves to be allowed. Hence, I proceed to pass the following order.

ORDER

1. Applications is hereby allowed subject to costs of Rs. 1000/- [One thousands rupees].

2. After compliance of condition precedent, legal representatives of deceased plaintiff be brought on record on or before next date.
3. Plaint be amended accordingly and submit the copy of amended plaint.

Place : Chikhli.

Date : 04/07/2025.

(Smt. M.V .Poul)
2nd Jt. Civil Judge, J.D.,
Chikhli.