



**ORDER BELOW EXH. NO. 44 IN REG. CIVIL  
SUIT NO. 43/2015.**

Smt. Anandi Chandrakant Kamalkar Vs. Chandrkant Kedari  
Kamalkar Dead.

This is an application by plaintiff in order to bring on record legal-representatives of deceased defendant No. 01-B **Ranjeet Chandrakant Kamalkar** who died on 22/04/2021. Plaintiff has stated that deceased defendant No. 01-B. Ranjeet do not have any other legal-heirs except the following:-

1. Smt. Aakanksha Ranjeet Kamalkar                      Widow.
2. Charan Ranjeet Kamalkar                                      Son.

**02.** Defendant has resisted this application by contending that, plaintiff has not filed separate application for setting aside abatement against deceased defendant No. 01-B. Hence, the present application is not tenable as the legal-heir Charan is two years old boy and guardian is also not appointed for him.

**03.** Perused the application and say. Heard. This application comes under provisions of Order XXII rule 3 and 4(1) of Code of Civil Procedure, 1908 (*hereinafter referred to as 'C.P.C. for sake of brevity*). As per Article 120 of the Limitation Act, 1963, 90 days have been provided to bring on record or to make parties in the suit, the legal-representatives of deceased defendant No. 01-B and defendant Ranjeet is stated to have died on 22/04/2021. This application is placed on record on 28/01/2022. Thus, present application was not filed within the required period of 90 days from the date of death of Ranjeet i.e. 22/04/2021. However, the delay has been condoned by

way of order below application below Exh. No. 43.

04. Defendants have contended that, plaintiff has not filed separate application for setting aside abatement against deceased defendant No. 1-B. However, reliance is placed on the ruling of *Vasant Jagannath Malkar-Teli and Ors. Vs. Parvati Aananda Patak and Ors. 2012 (6) Mh.L.J 138*. In this ruling, reference is made to the ruling of the Hon'ble Supreme Court of *Mithailal Dalsanger Singh and Ors. Vs. Annabai Devram Kini and Ors. Reported in (2003) 10 SCC 691*. As per this ruling it prayer of bringing the legal-representatives on record, if allowed, would have the effect of setting aside the abatement as a 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 and pedantic approach in such cases is not called for. The ruling is squarely applicable to the instant application and adopting a lenient approach, especially considering that, the matter is of the year 2015, the contention raised by defendants about not placing on record a separate application for setting aside abatement against defendant No. 3 is not given much importance. Hence, the present application gains importance.

05. Now, it has to be seen whether right to sue survives against defendant No. 1-B in the suit. The reliefs claimed in this suit are partition, declaration and perpetual injunction. Thus, there is dispute with respect to proprietary rights of the parties. As per legal principle - *Actio personalis moritur cum persona* i.e. a personal

right of action dies with the person. Thus, what is to be seen in this matter is that whether with the death of defendant No. 01-B and Ranjeet, the cause of action is also extinguished against them. Now, this suit is for partition, declaration & perpetual injunction. It pertains to immovable agricultural properties. This suit is not based on personal wrong or torts to the body of the defendant No. 01-B. But, it is arising out of the grievances pertaining to proprietary rights. After the death of defendant No. 01-B, his successors would have interest in defending the present suit, especially, about the contention of ownership, possession of/in proprietary rights in the suit properties. Thus, the suit is not based on individual and personal cause of action, but it is pertaining to the proprietary rights in the suit properties. Thus, cause of action survives with the legal representatives of defendant No. 01-B.

**06.** Accordingly, right to sue survives in this suit. Defendants have contended that, legal-heir Charan is a minor and guardian has to be appointed for him. For this purpose, the present application can not be rejected and plaintiff can take steps to appoint guardian for minor Charan after he is brought on record. Thus, the present application being supported by affidavit, it can be allowed to bring on record legal-representatives of defendant No. 01-B. Hence, following order is passed -

**ORDER.**

<b>1.</b>	The abatement against deceased defendant <b>No. 1-B Ranjeet Chandrakant Kamalkar</b> is hereby set aside.
<b>2.</b>	Plaintiff is allowed to bring on record legal-

	representatives of deceased defendant No. <b>1-B. Ranjeet Chandrakant Kamalkar.</b>
<b>3.</b>	Plaintiff shall carry out the amendment within 14 days of the date of the order and supply amended copies on or before next date.
<b>4.</b>	There shall be no order as to costs.

**Date : 21/03/2022.**

**Place : Kagal.**

**(Katkar Vijaya N.S.)  
Jt. Civil Judge, Junior Division,  
Kagal.**