



**COMMON ORDER BELOW EXH. NO. 15 IN**  
**REG. CIVIL SUIT NO. 115/2018.**

Shanta kakasaheb Patil Vs. Yalgonda Urf Annaso  
Mhadgonda Patil.

This is an applications by plaintiff in order to bring on record legal-representatives of deceased defendant No. 1 Yelgonda who died on 09/06/2021. Plaintiff has stated that deceased defendant No. 1. **Yelgonda @ Aannasaheb Mhadgonda Patil** do not have any other legal-heirs except the following:-

1. Smt. Tarabai Yelgonda @ Aannaso Patil- Widow
2. Balasaheb Yelgonda @ Aannasaheb Patil- Son
3. Mahadev Yelgonda @ Aannasaheb Patil- Son
4. Sau. Aakkatai Sanjay Patil - Daughter
5. Shanta Kakasaheb Patil- -

Tarabai, Balasaheb, Mahadev, Aakkatai are defendant No. 1 to 4 in the present suit.

**02.** Defendants have resisted the application by filing say at the last page of the application stating that, the contents of the application is false and misleading. Hence, the application be rejected.

**03.** Perused the application and say. Heard. This application comes under provisions of Order XXII rule 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. Defendant No. 1 Yelgonda is stated to have died on 09/06/2021. This application is placed on record on 22/11/2021. Death certificate of defendant No. 1 Yelgonda is placed on record at Exh. 3/1 which reflects that, Yelgonda has died on 09/06/2021. Thus, present application was not filed within the required period of 90 days from the date of death of Yelgonda i.e. 09/06/2021. However, the condonation of delay and abatement against deceased defendant No. 1 has been set aside as per order below Exh. No. 14. Thus, the present application gains importance.

**04.** Now, it has to be seen whether right to sue survives against defendant No. 1 in the suit. The reliefs claimed in this suit are partition 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. 1 Yelgonda, the cause of action is also extinguished against him. Now, this suit is for declaration of ownership of the suit properties. It pertains to immovable agricultural properties i.e. Gat No. 1246, 1252/1, 1252/2, 1252/3, 1253, 1254/2, 477, 490, 792 having different areas. This suit is not based on personal wrong or torts to the body of the plaintiffs. But, it is arising out of the grievances pertaining to proprietary rights. After the death of defendant No. 1, his successors would have interest in defending the present suit especially about the contention of ownership and obstruction of 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. 1.

**05.** Accordingly, right to sue survives in this suit and the present application being supported by affidavit, it can be allowed to bring on record legal-representatives of defendant No. 1. Hence, following order is passed -

**ORDER.**

|    |                                                                                                                                         |
|----|-----------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Plaintiff is allowed to bring on record legal-representatives of deceased defendant No. 1 <b>Yelgonda @ Aannasaheb Mhadgonda Patil.</b> |
| 2. | Plaintiffs shall carry out the amendment within 14 days of the date of the order and supply amended copies on or before next date.      |
| 3. | There shall be no order as to costs.                                                                                                    |

**Date : 27/01/2022**  
**Place : Kagal.**

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