



**ORDER BELOW EXH. NO. 195 IN REG. CIVIL
SUIT NO. 67/2008**

**Sou. Shalabai Dashrath Lohar Vs. Shri Janaba Tukaram
Sutar.**

This is an application by plaintiffs in order to bring on record legal-representatives of deceased plaintiff No. 1. Shalabai Dashrath Lohar who died on 23/09/2019. Plaintiffs have stated that deceased plaintiff No. 1. Shalabai do not have any other legal-heirs except the following:-

1. Shri. Dashrath Vitthal Lohar Husband.
2. Sou. Geeta Baburao Sutar Daughter.
3. Sou. Sanjivni Balu Sutar Daughter.
4. Shri. Hanmant Dashrath Lohar Son.
5. Shri. Santosh Dashrath Lohar. Son.

02. Say of the other side was called for. However, no say has been filed till today. Hence, the application is proceeded without say of the defendants.

03. Perused the application and say. Heard. This application comes under provisions of Order XXII rule 3(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 plaintiff No. 1. plaintiff No.1. Shalabai is stated to have died on 23/09/2019. This application is placed on record on 08/03/2021. Death certificate of plaintiff No.1. Shalabai Dashrath Lohar is placed on record at Exh. 193/d, which reflects

that, Shalabai has died on 23/03/2019. Thus, present application was not filed within the required period of 90 days from the date of death of Shalabai i.e. 23/03/2019, however, the delay has been condoned and the abatement against plaintiff No. 1 is also set aside. Hence, the present application gains important.

04. Now, it has to be seen whether right to sue survives against defendant in the suit. The reliefs claimed in this suit are partition, separate possession of shares and declaration. There are contentions about nature of the suit properties. 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 plaintiff No. 1. Shalabai, the cause of action is also extinguished with her. Now, this suit is for partition, separate possession of shares and declaration. It pertains to immovable agricultural properties i.e. Gat No. 49, 53 and Grampanchayat property No. 65, 66 having different areas. This suit is not based on personal wrong or torts to the body of the plaintiff No. 1 But, it is arising out of the grievances pertaining to proprietary rights. After the death of plaintiff No. 1, her successors would have interest in conducting the present suit, especially, about the contention of ownership, partition 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 plaintiff 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 plaintiff No. 1. Hence, following order is passed -

ORDER.

1.	Plaintiff No. 2 and 3 are allowed to bring on record legal-representatives of deceased plaintiff No.1. Shalabai Dashrath Lohar.
2.	Plaintiff No. 2 and 3 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 : 10/01/2022.

Place : Kagal.

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