

MHKO130011372012

**ORDER BELOW EXH. NO.114 IN REG.
CIVIL SUIT NO. 331/2012**



**Shivaji Dnaynu Patil and others
Vs.
Dinkar Dnyanu Patil and others**

This is an application filed by plaintiffs in setting aside the abatement with respect to deceased plaintiff No. 10 Shripati Tukaram Patil as per Order XXII rule 9(2) of Code of Civil Procedure 1908, (hereinafter referred to as 'C.P.C' 1908 for the sake of the brevity and convenience.)

02. The brief contents of the application is as under.

It is the contention of the applicants that, plaintiffs have filed this suit for partition and perpetual injunction against the defendants. Plaintiff No. 10 died on 05/10/2020, however they could not bring on record the legal-heirs of deceased plaintiff No.10 within prescribed time. Thus, there was delay of 14 days. The delay was not intentional and it is of not so long period. Hence, plaintiffs pray to condone the delay in bringing on record of legal-heirs of deceased plaintiff No.10 and also to set aside the abatement against deceased plaintiff No.10.

03. Defendant No.1 has filed reply at the overleaf of the application, wherein he has contended that this application is false and misleading and the reasons mentioned therein are not tenable.

Plaintiffs and deceased plaintiff No.10 are residing in the same village. Hence, plaintiffs had sufficient knowledge about death of plaintiff No.10. Hence, they are unnecessarily delaying the matter by avoiding to take steps at appropriate time in order to prolong the proceedings. Hence, present application be rejected for costs of Rs.5000/- be imposed on the plaintiffs.

04. Heard the learned counsel for the plaintiff and defendant. Perused the application and the say. In view of the rival contentions of both the parties, the following points arise for my determination for which findings are recorded along with the reasons.

SR. NO.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether the abatement against plaintiff No.10 Shripati Tukaram Patil be set aside ?	Yes.
2.	What order?	Application is allowed.

REASONS

05. It would be very helpful if, at the outset, the necessary legal provisions with respect to the abatement and condonation of delay in setting aside abatement is discussed. The provisions of Order XXII rule 3 of C.P.C, 1908 are reproduced as below.

3(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal

representative of the deceased plaintiff to be made a party and shall proceed with the suit.

3(2) Where within the time limited by law no application is made under sub-rule(1), the suit shall abate so far as deceased plaintiff is concerned, and, on the application of the defendant the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of deceased plaintiff.

06. As per Article 120 of Limitation Act, 1963, plaintiffs are supposed to bring on record the legal-representatives of deceased plaintiff No.10 Shripati within 90 days from the date of death of plaintiff No.10 i.e. 05/10/2020. As this was not done so, hence proceedings were automatically abated against plaintiff No.10 after the expiry of 90 days from 05/10/2020. As per Article 121 of Limitation Act, 1963, plaintiffs were supposed to apply for setting aside abatement within 60 days from the date of abatement. As per Section 5 of Limitation Act, 1963, application under Order XXII of C.P.C., may be admitted after the prescribed period if the plaintiffs satisfy the Court that they had sufficient cause for not making the application within prescribed period.

07. In this backdrop of the provisions, delay of 14 days in setting aside abatement of deceased plaintiff No. 10 has been condoned by way of order below Exh. No. 116.

08. It is a settled position of law that the Court in dealing with such application should not be over strict and highly technical so as to sacrifice the cause of substantial justice and thereby deny the parties to have their cause decided on merits. Also, from the

facts on record and from the say of the defendant No.1 to this application, it appears that, the failure of the plaintiffs to set aside abatement against deceased plaintiff No. 10 has not caused any prejudice to the defendant No.1. The present suit is for partition and perpetual injunction. Parties have grievances against each other. The right to sue survives. Hence, it would be appropriate and fair to set aside the abatement against deceased plaintiff No.10. Defendant No.1 has asked for costs of Rs.5000/-, however, it would not be appropriate to impose any costs due to lock-down situation created by pandemic of Covid-19. Accordingly, point No. 1 is answered in the affirmative and in answer to point No. 2, following order is passed.

ORDER

The abatement against deceased plaintiff No.10 Shripati Tukaram Patil is hereby set aside.

Date :- 15/03/2021
Place : Kagal

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

I affirm that the contents of this P.D.F. file Judgment/order are same, word to word, as per the original Judgment/order.

Name of the Stenographer :- Sidram V. Kamble

Name of Court :- Katkar Vijaya N.S. Jt. Civil
Judge (Jr.Dn.), Kagal.

Date of dictation/typed :- 15/03/2021

Judgment/order signed by the :- 15/03/2021

P.O. on

Judgment/order uploaded on :- 15/03/2021

