

MHKO130011372012

**ORDER BELOW EXH. NO.115 IN REG.
CIVIL SUIT NO. 331/2012**



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

This is an application filed by plaintiffs to bring on record the legal representatives of deceased plaintiff No.10 Shripati Tukaram Patil as per Order XXII of Code of Civil Procedure 1908, (hereinafter referred to as 'C.P.C' 1908 for the sake of the brevity and convenience.)

Following are the names of legal-representatives of deceased plaintiff No.10 -

- | | | |
|----|-----------------------------|----------|
| 1] | Smt. Bayakka Shripati Patil | Widow |
| 2] | Sou. Sangita Anilk Patil | daughter |

02. It is the contention of the plaintiffs that, plaintiff No.10 Shripati Tukaram Patil died on 05/10/2020, however they could not bring on record the legal-heirs of deceased plaintiff No.10 Shripati. 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 thereafter to set aside the abatement and to bring on record legal-representatives of deceased plaintiff No.10.

03. Defendant No.1 has filed reply at the overleaf of this

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 plaintiffs be allowed to bring on record legal-representatives of deceased plaintiff No.10 Shripati Tukaram Patil?	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 and bringing on record the legal-representatives of deceased plaintiff No.10 is discussed. The provisions of Order XXII rule 3 of C.P.C, 1908 are reproduced as below.

3(1)	<i>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.</i>
3(2)	<i>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.</i>

06. The suit was abated against deceased plaintiff No.10. Plaintiffs have applied below Exh. 114 for condonation of delay in applying for setting aside the abatement against deceased plaintiff No.10. The said application has been allowed. Plaintiffs have also applied below Exh. No. 116 for setting aside abatement and the same has been allowed.

07. In consequence of delay in applying for setting aside abatement against deceased plaintiff No. 10 being condoned and permission to set aside the abatement being granted, it would be appropriate to bring on record the legal-representatives of deceased plaintiff No. 10 on record. 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 bring on record legal-representatives of deceased plaintiff No. 10 in order to determine the real controversy between the parties. 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

- 1] Plaintiffs are allowed to bring on record legal-representatives of deceased plaintiff No.10 Shripati Tukaram Patil.
- 2] Plaintiffs shall carry out the amendment and supply amended copies on or before next date.

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