



**ORDER BELOW EXH. NO. 118 IN REG. CIVIL
SUIT NO. 331/2012.**

Shivaji Dnyau Patil Vs. Dinkar Dnau Patil etc.

This is an application by plaintiffs in order to bring on record legal-representatives of deceased defendant No. 01 **Dinkar Dnyanu Patil** who died on 17/09/2021 and plaintiff No. 6. Pandurang Tukaram Patil died on 14/09/2021. Plaintiff has stated that deceased defendant No. 01. Dinkar and plaintiff No. 6. Pandurang do not have any other legal-heirs except the following:-

1. Shankar Dinkar Patil Son.
2. Mangal Namdev Shinde Daughter.
3. Ramesh Dinkar Patil Son.

Plaintiff No. 6 do not have any legal-heirs except the following:-

1. Smt. Hirabai Pandurang Patil Widow.
2. Vijaymala Shivaji Patil Daughter.

02. 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 and plaintiff No. 6. Defendant No. 01 Dinkar is stated to have died on 17/09/2021 and plaintiff No. 6. Pandurang is died on 14/09/2021. This application is placed on record on 12/10/2021. Thus, present

application was filed within the required period of 90 days from the date of death of Dinkar i.e. 17/09/2021 and Pandurang i.e. 14/09/2021.

04. Now, it has to be seen whether right to sue survives against defendant No. 1 and plaintiff No. 6 in the suit. The reliefs claimed in this suit are partition and separate possession of shares 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 and plaintiff No. 6. Dinkar & Pandurang, the cause of action is also extinguished with him. Now, this suit is for 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 and plaintiff No. 6. But, it is arising out of the grievances pertaining to proprietary rights. After the death of defendant No. 01 and plaintiff No. 6, 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 and plaintiff No. 6.

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. 01 and plaintiff No. 6. Hence, following order is passed -

ORDER.

1.	Plaintiffs are allowed to bring on record legal-representatives of deceased defendant No. 01. Dinkar Dnyanu Patil and plaintiff No. 6. Pandurang Tukaram Patil.
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 : 05/02/2022.

Place : Kagal.

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