


MHKO140002322007 	<b>R.C.S. No.34/2007</b> <b>Appa Rama Kadalgekar</b> <b>Vs.</b> <b>Yalappa Subhana Kotekar</b>
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**ORDER BELOW EXHIBIT- 102**

**(Passed on- 10/09/2025)**

1. The present application is filed by plaintiff for condonation of delay in bringing the legal representatives of the deceased plaintiff no.1 Appa Rama Kadalgekar and for setting aside abatement order.
2. It is contended that, the plaintiffs have filed present suit for partition, separate possession and perpetual injunction. During pendency of the suit, plaintiff no.1 Appa Rama Kadalgekar is died on 01/07/2024. The legal representatives of deceased are- 1A) Shanta Appa Kadalgekar, 1B) Shila Ramchandra Kadalgekar, 1C) Prajakta Ramchandra Kadalgekar, 1D) Sayali Ramchandra Kadalgekar & 1E) Sanjay Appa Kadalgekar. They are the only legal heirs of deceased plaintiff. Inadvertently the delay of 11 months 8 days is caused. The delay is not intentional and it is necessary to condone the same in order to bring the legal representatives of deceased on record and to set aside the abatement order. The legal representatives of the deceased were not having legal knowledge and due to sudden death of plaintiff, they could not meet their advocate and delay is caused. If the application is not allowed then the plaintiff will suffer irreparable loss. Hence, present application.
3. The ld. advocate for defendants filed say and opposed the application. It is submitted that, the application is not tenable and

the reasons are not just and proper. So, the application is liable to be rejected with costs.

4. Perused the record. Read the application, and documents. Heard the learned advocate for the both side.

### **REASONS**

5. Perused the record. It is seen that the the plaintiff has filed present suit for partition, separate possession and perpetual injunction. There is no dispute that the plaintiff no.1 is died on 01/07/2024. The applicants have not taken steps for bringing legal representatives of deceased within prescribed period and they have caused delay of more than 11 months. There delay is condoned vide order below Exh.103. However, record shows that, the issues are framed and the matter is pending for evidence of defendants. The material rights as to immovable property are going to be decided in the present matter. The suit is for partition and hence the shares of all the parties having interest are going to be decided. Hence, all the necessary parties have to be brought on record. In such situation it would not be proper to reject the application for condonation of delay and setting aside abatement order only on the ground of delay. So in order to decide the issue conclusively it would be proper to allow all the necessary party to take part in the matter and to proceed legal heirs.
6. It will help in avoiding the multiplicity and further complication. The shares of both side including legal representatives of deceased, if any are going to be decided the present. Earlier application was rejected on the technical ground that the plaintiffs have not applied for condonation of delay. Now, the plaintiffs have

applied for the condonation of delay and in such situation it cannot be said that the present application is not tenable. Hence, I am of the view that right to sue survives and legal representative of deceased plaintiffs are necessary party. No prejudice will be caused other side. On the contrary it would help in deciding the suit on merit. Hence, it would be proper to set aside the abatement order. Thus, I pass following order.

**ORDER**

1. The application is allowed.
2. The order of abatement is set aside.

Date-10/09/2025  
Chandgad.

(Waman D Jadhav)  
Jt. Civil Judge Junior Division. Chandgad.