

MHKO140002442019 	Regular Civil Suit No.69/2019 Khatalahmed Ali Mulla Vs. Allbaksha Sikandar Mulla
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ORDER BELOW EXHIBIT- 27

(Passed on- 11/09/2025)

1. The present application is filed by plaintiff for condonation of delay in bringing the legal representatives of the deceased defendant no.3, 4 & 14 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, the defendant no.3 Najamoddin Sikandar Mulla is died on 25/05/2022. The defendant no.4 Kashim Appa Mulla is died on 13/10/2022 and defendant no.14 Gaus Hasan Mulla is died on 17/02/2022. The defendants have not given intimation about the death of defendant. The plaintiffs are resident of Belgaon. The plaintiffs were not aware about the death of defendants. The legal representatives of deceased are residing at different places and plaintiffs were not aware about the particulars of legal representatives. The plaintiffs could not get the death certificate and could not get the correct information about the legal representatives. Hence, the delay is caused. It is necessary to condon the delay and set aside the abatement order. If the application is not allowed then hardship and greater loss will be caused to the plaintiffs. Hence, present application.

3. The ld. advocate for defendants filed say and opposed the application.
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 plaintiffs have filed present suit for partition, separate possession and perpetual injunction. There is no dispute that the defendant no.3, 4 & 14 are died in the year, 2022. The plaintiffs have not taken steps for bringing legal representatives of deceased within prescribed period and they have caused delay of more than 2 years. However, record shows that, the trial is not yet commenced. 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. 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 condone the delay. At the same

time it would be proper to impose costs for causing delay. Thus, I pass following order.

ORDER

1. The application is allowed subject to costs of Rs.1500/-.
2. The delay caused in bringing the legal representatives of deceased defendant no.3, 4 & 14 is condoned and the order of abatement is set aside.
3. The amount of costs is payable to other side.

Date-11/09/2025
Chandgad.

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