


MHKO140003422016	<u>ORDER BELOW EXH. 40 IN R.C.S. NO. 84/2016</u>
	Dattu Chandru Gawade Vs. Ravaji Gawade

This is a suit for partition, separate possession and permanent injunction. By this application filed at Exh.40, plaintiffs prayed to setting aside deemed abatement order supposedly passed on account of death of defendant No.20. In the application it is contended that, defendant No.20 died on 12/04/2017. Due to plaintiff's illness, it is difficult to bring the legal heirs on record of defendant no.20. Considering nature of the suit cause of action survives. If delay is not condoned and abatement is not set aside will cause greater hardship to the L.Rs. of defendant No.20. Thus, prayed accordingly. The application is supported with affidavit of plaintiff No.2.

2. The application is strongly opposed by the defendant by filing their say behind the application and submitted that, the delay is eight years so heavy cost may be imposed on them and application be allowed.

3. Heard, the ld. Advocate for the plaintiff and the ld. Advocate for the defendants.

4. It is a matter of record that, defendant No.20 died on 12/04/2017 as per the death certificate and the plaintiff were required to bring the L.Rs. of deceased defendant No.20 on record within 90 days from the date of death of defendant No.20. However, nothing is done by the plaintiff within the said time limit to bring L.Rs. of defendant No.20 on record. This application is filed on 29/09/2025. There is a huge delay. The reasons mentioned in the application regarding delay though not appear to be probable. However, in the interest of justice and to decide the matter on merit the same is required to be condoned. Loss caused to the defendants

because of delay in bringing L.Rs. of defendant no.20 on record can be compensated by granting costs to the defendants. Hence, following order.

ORDER

The application below Exh.40 is allowed subject to costs of Rs. 500/- to be paid to the defendants in common.

On payment of the said amount of costs, delay caused in filing of application seeking setting aside of abatement order presumedly came into effect on account of death of defendant no.20 shall stand condoned.

On payment of the said amount of costs, deemed abatement order presumedly came into effect on account of death of defendant no.20 shall stand set aside.

Parties to note.

Date : 01/10/2025.

(V.S. Agarwal)
Civil Judge Jr.Dn., Chandgad.