

ORDER BELOW EXH. 36

This is an application for setting aside of abatement. As per plaintiffs defendant has expired on 04/05/2017. Pursuant thereto plaintiffs approached to the concerned office of Village Panchayat from time to time to obtain death certificate of defendant. However, he can not get the death certificate in time. Consequently, the suit was abated after the period of 90 days from the date of death of the defendant. Thus, present application.

2. Vide say the Ld. Advocate for deceased defendant strongly combated the application on the ground that the content of application are false and frivolous. Further, the proposed heirs of deceased defendant do not inherit the property held by deceased defendant as the deceased defendant had executed the will. Ultimately, he has prayed for rejection of the application.

3. Heard both sides. Perused record. The suit is for partition and septate possession. Further, as per death certificate on record defendant has expired on 04/05/2017. Consequently, the suit is abated against his legal representative after the expiry of 90 days from the date of death i.e. 02/08/2017. Further, the limitation Act provides the limitation period of 60 days from the date of abatement to apply for setting aside the abatement. Thus, the limitation period of 60 days for preferring the application for setting aside the abatement expires on 01/10/2017 . Instant application is moved on 01/09/2017. Thus, the

present application within the period of limitation. Further, considering nature of suit it would be just and proper to set aside the abatement. However, from the record it appears that the proceeding has been delayed due to the inaction of negligence on the part of plaintiffs. However, said delay can be compensated by way of costs. Hence, following order is passed :-

Order

1. Abatement is set aside subject to cost of Rs. 300/- payable at Legal Aid account Radhanagari.

Radhanagari.

Date : 20-07-2018.

(M. H. Shitole)
Civil Judge, Jr.Dn., Radhanagari.

I Affirm that, the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer	U.S.Telang
Name of Court	Civil Judge, Junior Division & Judicial Magistrate, First Class, Radhanagari.
Date of Dictation	20/07/2018
Order signed by the P.O. On	20/07/2018
Order uploaded on	27/07/2018