



COMMON ORDER BELOW EXH. 37

- 1) Applicants i.e. (a)Smt. Gangubai Tukaram Patil (b)Kumar Tukaram Patil (c)Vaishali Prakash Gurav (d)Gitanjali Yuvaraj Gurav and (e)Sunita Sanjay More have filed present application for substituting them in place of deceased plaintiff no.1 by setting aside abatement of suit against plaintiff no.1.
- 2) The applicants wants to substitute them as per Order XXII Rule 3 of Code of Civil Procedure, 1908. Application is supported by affidavit.
- 3) It is submitted by way of present applications that, plaintiff no.1 expired on 29/09/2021. The applicants are necessary parties in the present suit after the death of plaintiff no.1 as right to sue survived upon them. If they are substituted in place of deceased plaintiff no.1, present suit will be decided in merits. The advocate for applicants reiterated contents of application at the time of argument. On the above grounds, applicants prayed to substitute them in place of deceased plaintiff no.1.
- 4) Defendants filed say on the overleaf of the application. Defendants submitted that, application may be allowed subject to

heavy cost.

5) Perused the application and say. Defendants have not disputed the death of plaintiff no.1. Plaintiff no.1 expired on 29/09/2021. As per order below Exh.36 delay caused to set-aside abatement has been condoned. It is worth to note that, present suit is filed for declaration and injunction. According to me, considering the nature of the suit, the right to sue has been survived upon applicants after the death of plaintiff no.1. As they are ready and willing to conduct the case, in such circumstances, if they are substituted in place of deceased plaintiff no.1, no harm will cause to defendants. On the contrary, if they are are not substituted, their will be multiplicity of litigation. Therefore, it will be just, legal and proper to substitute them in place of deceased plaintiff no.1 by setting aside abatement of suit against plaintiff no.1. As regards to cost, considering the Covid-19 restrictions, I am not inclined to award any cost.

6) Consequently, for the aforesaid reasons, I proceed to pass the following order:

ORDER

1. Application is allowed.
2. Abatement of the suit against deceased plaintiff no.1 is set-aside.
3. Above applicants be substituted in place of deceased plaintiff no.1 being his legal representatives as plaintiffs in title of the plaint.
4. Advocate for plaintiffs to comply the order within 7 days from the date of this order.

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5. Cost in cause.
6. Application is disposed off accordingly.

Place : Radhanagari.
Date : 28/03/2022.

(S. K. Shaikh)
Civil Judge Junior Division,
Radhanagari.