

R.C.S. NO. 279/2008
Bapurao Vs. Kishanrao

ORDER BELOW EXH.101 IN RCS NO.279/2008

The application is filed by the plaintiff for setting aside abatement of suit under Order 22 Rule 9 of Code of Civil Procedure. Say of defendants and proposed LR's was called. However, defendants failed to file say despite sufficient opportunity. Legal representatives of defendant No.1 have filed say at back leaf of the application and contended that defendant No.1 was brother of the plaintiff. Defendant No.1 has expired in 2021. The plaintiff was aware about the said fact. In such circumstances, the plaintiff has not taken steps promptly. Hence, the application deserves to be rejected with costs.

2. Perused application and the record.

3. Defendant No.1 has expired on 22/12/2021 and present application is filed on 13/01/2025. The plaintiff has not taken on record legal representatives of defendant No.1 within limitation period. Hence, the suit is technically abated against defendant No.1.

4. The suit is for partition and separate possession in respect of suit land and as the cause of action survives against the legal representatives of defendant No.1, his LR's needs to be taken on record in order to avoid multiplicity of proceeding and to decide the controversy between parties at once on merit.

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Therefore, it is just and proper to allow the application.
Accordingly, I pass following order;

ORDER

1. The application is allowed subject to costs of Rs.1000/-.
2. The abatement of suit in respect of defendant No.1 is hereby set aside.
3. The amount of costs shall be paid to legal representatives of defendant No.1 namely Sulubai, Sudhakar, Padmakar and Rekha.

(Dictated and pronounced in open Court.)

Udgir
Date 03/11/2025

(K. A. Yadav)
2nd Jt. Civil Judge J.D.,
Udgir

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ORDER BELOW EXH.85 IN RCS NO.279/2008

The application is filed by the plaintiff for condonation of delay for taking legal representatives of defendant No.1 on record under Section 5 of the Limitation Act. Say of defendants was called. However, they failed to file say despite sufficient opportunity. Hence, application is proceeded without their say.

2. Perused application and the record.

3. Defendant No.1 has expired on 22/12/2021 and present application is filed on 02/07/2024. However, there is a delay of about 2 years 3 months in making present application. Plaintiff contended that the concerned Gram Panchayat was not ready to provide copy of death certificate of defendant No.1 as there is not entry in their Birth and Death register. Therefore, there is delay in taking the legal heirs of defendant No.1 on record. The delay is not intentional.

4. The suit is for partition and separate possession in respect of suit land and as the cause of action survives against the legal representatives of defendant No.1, his LR's needs to be taken on record in order to avoid multiplicity of proceeding and to decide the controversy between parties at once on merit. Therefore, it is just and proper to allow the application. Accordingly, I pass following order;

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ORDER

1. The application is allowed.
2. The delay in making an application for taking legal representatives of defendant No.1 is hereby condoned.

(Dictated and pronounced in open Court.)

Udgir
Date 03/11/2025

(K. A. Yadav)
2nd Jt. Civil Judge J.D.,
Udgir

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ORDER BELOW EXH.84 IN RCS NO.279/2008

The plaintiff has sought permission to take legal representatives of deceased defendant No.1 on record. It is claimed that defendant No.1 has expired on 22/12/2021 and persons named in the application are his legal representatives. The application is supported with affidavit. Say of defendants was called. However, they failed to file say despite sufficient opportunity. Hence, application is proceeded without their say.

2. Perused application and the record.
3. Death certificate (Exh.96) confirms the fact of death and date of death. There is no any dispute regarding name and numbers of legal representatives of deceased defendant No.1. Taking into account the nature of suit, the cause of action survives against the legal representatives of deceased defendant No.1. The application for delay condonation and abatement set aside are also allowed. Thus, it deserves to be allowed. Hence, the order ;

ORDER

1. The application is allowed as prayed for.
2. Permission is hereby granted vide Order XXII Rule 4 of the Code of Civil Procedure, 1908 to take legal representatives of defendant No.1 on record.

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3. The plaintiff to carry out appropriate amendments in the plaint and shall file copy of amended plaint on or before next date.

(Dictated and pronounced in open Court.)

Udgir
Date 03/11/2025

(K. A. Yadav)
2nd Jt. Civil Judge J.D.,
Udgir