

**ORDER BELOW EXH. 168**

01. Present application is filed by the counter plaintiff to brought the legal heirs of deceased counter plaintiff No. 2 on record.

02. In short, it is the contention of the counter plaintiff that, as counter plaintiff No.2 Sudhakar died on 26.05.2012 and he is having the legal heirs as mentioned in the application. Due to oversight legal heirs could not be added as a party. The delay is not intentional. In suit already the L.Rs. are brought on record. Therefore, no prejudice will cause to counter defendants, if the L.Rs. of counter plaintiff No. 2 came to be brought on record. Hence, prayed to condone the delay and the L.Rs. be added.

03. Original plaintiff/counter defendant opposed the application contended that Sudhakar died on 26.05.2012. His L.Rs. are brought on record by the original plaintiff. There is considerable delay in filing the application. Hence, prayed to reject the application with costs.

04. Heard both the parties. It appears that there is delay of 5 years in bringing L.Rs. on record. The original plaintiff has already brought the L.Rs. of deceased Sudhakar on record on 25.02.2014, in spite of that the counter plaintiff failed to make the application. Though this is the position, it is necessary to mention here that the present suit is for partition, therefore, though L.Rs. of Sudhakar are not brought on record within limitation but right to sue is survived. Therefore, the counter claim cannot be abated, considering provision of Order 22

2 R.C.S. No. 215/2010  
Gorakhnath Vs. Mohan & oth.

Rule 1. Therefore, it is necessary to condone the delay and brought the L.Rs. of Sudhakar on record. As the application is filed at belated stage, it is necessary to impose the costs on counter plaintiff. Hence, I pass following order.

**ORDER**

Application is allowed subject to costs of Rs. 750/-.

Sd/-

(R. P. Kulkarni)

Civil Judge Senior Division,  
Nilanga.

Nilanga.

Dated : 24.11.2017.