

**ORDER BELOW EXH. 172**

01. Present application is filed by the counter plaintiff to set aside the abatement order.

02. In short, it is the contention of the counter plaintiff that, Sudhar died on 26.05.2012, due to oversight the legal heirs could not brought on record within limitation. The delay is not intentional one. Hence, prayed to set aside the order of abatement.

03. Original plaintiff opposed the application on the ground that there is inordinate delay. The application is not tenable. Hence, prayed to reject the application.

04. Heard both the parties. It appears that there is considerable delay to file the application to set aside abatement. But it is necessary to mention here that as per Order 22 Rule 1 of CPC, the suit cannot be abated when right to sue is survive. As suit is for partition of the ancestral property the right to sue survives on the counter plaintiff No.1. Therefore, considering this position of law, it is necessary to set aside the abatement by imposing the costs. Hence, I pass following order.

**ORDER**

Abatement is set aside subject to costs of Rs. 750/-.

Nilanga.  
Dated : 24.11.2017.

Sd/-  
(R. P. Kulkarni)  
Civil Judge Senior Division,  
Nilanga.