


CNR NO. MHND100004722019 	<u>R.C.S.No.77/2019</u> <u>Shankar</u> <u>Versus</u> <u>Balaji</u>
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Order Below Exh.38
(Passed on 28/07/2023)

Plaintiff filed present application for setting aside abatement order, dated **16/02/2023** passed below Exh.1 and to allow him to bring legal representatives of deceased defendant No.2 on record. Application is supported by affidavit of plaintiff at Exh.39.

2. Applicant/plaintiff contended that defendant No.2 died on 10/10/2021. No any application was filed to bring legal representatives of defendant no.2 on record by him. As such, this Court has passed abatement order, dated 16/02/2023 below Exh.1. Plaintiff was busy in agricultural work and private work and as such, he could not file application to bring legal representatives of defendant no. 2 on record . It is, therefore, urged to set aside abatement order, dated 16/02/2023 passed below Exh.1 and to allow him to bring legal representatives of deceased defendant No.2 on record.

3. Defendants failed to file say and as such, application is proceeded without their say vide order dated 19/04/2023.

4. Heard learned Advocates for the plaintiff. Perused the record.

5. Defendant No.2 died on 10/10/2020. Suit is for

declaration of ownership and perpetual injunction. According to plaintiff, due to agricultural work and private work, he could not file application to setting aside abatement order. Valuable rights of the parties are involved. Considering all these facts of the case, abatement order dated 16/02/2023 needs to be set aside on suitable costs. I, therefore, pass the following order :-

Order

1. Application, Exh.38, is allowed.
2. Order of abatement dated 16/02/2023 passed below Exh.1 is set aside.
3. Cost in cause.

Date:- 28/07/2023

(Smt.R.A.A.Khateeb)
Joint Civil Judge Jr. Dn.
Kandhar.

CERTIFICATE

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	Y.B.Wani
Name of Court	Joint C. J. J. D. & J .M. F. C. Court, Kandhar.
Date of Decision	28/07/2023
Judgment/order signed by the P.O. On	28/07/2023
Judgment/order uploaded on	08/08/2023