



R.C.S.No. 266/2013
Murlidhar/Gorakh

Order Below Exh.94

Perused the application, affidavit along with it, entire record before me. Heard learned advocate for respective parties at length.

2. It is the contention of the applicants that defendant no.5 namely Machindra Sahebrao Gatkal is died on 18.12.2018. Name of legal representatives of deceased mentioned in instant application. Therefore, application may kindly be allowed and legal representative of deceased defendant no.5 namely Machindra may kindly be brought on record.

3. As per Order XXII of C.P.C., if defendant dies and right to sue does not survive against the surviving defendant alone, the court shall on an application on that behalf, cause Lrs. of deceased defendant be made party and shall proceed with the suit. This suit being for declaration and partition and in my view, right to sue survives in respect of plaintiffs. The defendant no.5 Machindra has died on 18.12.2018 and this application is moved on 27.08.2019 within not a stipulated time. Therefore, application at Exh.90 and 92 moved for condonation of delay and setting aside abatement order passed against deceased defendant no.5 which application came to be decided. So also notice to the Lrs.of deceased no.5 came to be issued and they appeared in the proceeding upon the notice. Therefore, no purpose would be served by rejecting the application. Hence, application deserves to be allowed subject to order for compliance order below Exh.90 and Exh.92. Hence, I proceed following order-

ORDER

1. Application is allowed.
2. Applicants are directed to carry out necessary amendment and to supply copy of amended plaint on or before next date.

Dated : 14.03.2022

(K. K. Khomane)
Jt.Civil Judge J.D., Bhoom

C E R T I F I C A T E

I affirm that, the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of Stenographer	:-	M.K.Shinde
Court	:-	Jt.C.J.J.D., Bhoom, Dist. Osmanabad.
Date	:-	14.03.2022
Order signed by the Presiding officer on	:-	14.03.2022
Order uploaded on	:-	15.03.2022