

RCS. NO. 625/2025  
Old No. 477/2022  
Abdul Vs. Ismail  
CNR No.MHOS140007892025

**ORDER BELOW AT APPLICATION EXH-59**

1. Heard learned counsel for the advocate for original plaintiff. Perused the application and the record. The present application is filed by the legal heirs of the original plaintiff seeking a declaration that the counter-claim filed by defendant Nos. 2 to 4 has abated. The record reveals that the original plaintiff instituted the present suit for perpetual injunction against the defendants. The defendant Nos. 2 to 4 filed their written statement and also preferred a counter-claim at Exhibit 36. During the pendency of the suit, the original plaintiff expired on 15.01.2023. Thereafter, his legal heirs were brought on record in the suit pursuant to the order passed below Exhibit 45. The defendant Nos. 2 to 4 filed their say to the said application on 04.12.2023, thereby clearly indicating that they had knowledge of the death of the original plaintiff. Despite having knowledge of the death of the original plaintiff, defendant Nos. 2 to 4, who are the plaintiffs in the counter-claim, failed to take steps for bringing the legal representatives of the deceased defendant in the counter-claim on record within the period prescribed under law. No application for condonation of delay or for setting aside abatement has been filed. Though sufficient opportunity was granted, defendant Nos. 2 to 4 have neither filed their reply to the present application nor opposed the relief sought.

2. A counter-claim is treated as a cross-suit. Consequently, upon the death of the defendant in the counter-claim, it is incumbent upon the plaintiffs in the counter-claim to bring the legal representatives of the deceased on record within the prescribed period. Failure to do so results

in abatement of the counter-claim, unless the abatement is set aside in accordance with law. In the present case, defendant Nos. 2 to 4 failed to take necessary steps within limitation despite having knowledge of the death of the original plaintiff. Therefore, the counter-claim has abated by operation of law.

#### ORDER

1. The application is allowed.
2. It is hereby declared that the counter-claim filed by defendant Nos. 2 to 4 at Exhibit 36 has abated against the deceased original plaintiff on account of failure to bring his legal representatives on record within the prescribed period.

Dictated and pronounced in open Court.

Date: 07/07/2026.

( A. A. Shaikh )  
Civil Judge Senior Division Paranda.