

CNR No.MHPU130010222022



Reg. Civil Suit No.256 of 2022
Asha Manohar Bandalkar & Ors.
Vs
Dattatray Yashwant Jadhav

ORDER BELOW EXH. No.34.

(Date : 24.06.2026)

This application is filed by the plaintiffs for setting-aside the abatement order passed against deceased defendant namely, Dattatray Jaywant Jadhav, who died on 30.04.2024.

2. It is contention of the plaintiffs that, the present suit is filed for declaration and preemption. The sole defendant, Shri. Dattatray Jaywant Jadhav, died on 30.04.2024. His wife, Smt. Anjana Dattatray Jadhav, also died on the same day. Upon the death of the defendant, the suit came to be abated against him. The plaintiffs have surviving cause of action against legal heir of deceased. Immediately after becoming aware of the death of the defendant, the plaintiff approached the Gramsevak, Malshiras, for issuance of the death certificate of deceased defendant. However, the Gramsevak refused to issue the same, stating that the heirs of the deceased had instructed him not to furnish the certificate to any third party. Despite repeated requests, death certificate was not provided. The Gram Sevak, Malshiras issued the death certificate to plaintiffs on 09.10.2024. Due to the non-availability of the death certificate, they could not file the present application within the statutory period of limitation. The delay caused is neither intentional nor deliberate. They had earlier filed an application for setting aside abatement order. However, due to inadvertence, the application for bringing the legal heirs on record was not filed simultaneously. The said application for setting aside abatement alone is not maintainable

in law. They have therefore withdrawn the earlier application and filed present application. No prejudice would be caused to the proposed legal heirs if they are brought on record and the abatement is set aside. Hence, plaintiffs prayed to allow the application.

3. On the other hand, legal representative of the deceased defendant filed reply and contended that, the application is false and frivolous. The defendant expired on 30.04.2024. The factum of his death was brought to the notice of this Court by the learned advocate of the defendant by filing puris (Exh.26) on 19.06.2024. It was incumbent upon the plaintiff to bring the legal representatives of the deceased on record within the prescribed period of 90 days. However, the plaintiffs failed to do so and has caused delay of near about 1 year and 7 months in filing the present application. Consequently, the suit came to be abated against the deceased defendant. It is further submitted that, upon the death of the defendant, the cause of action against him has ceased to survive and the suit now survives merely in a technical sense. Moreover, the deceased defendant was the plaintiff's paternal uncle, and therefore they cannot legitimately contend that he was unaware of the defendant's death or that he was unable to obtain the death certificate. The reasons assigned in the application are false. Hence, the present application deserves to be rejected.

4. Perused application, heard respective counsel at length. On perusal of the application it appears that, there is delay of 1 year and 7 months. The suit is for declaration and preemption. The copy of death certificate filed along with Exh.30/1 shows that the defendant Dattatray Jadhav died on 30.04.2024. According to the plaintiffs, they could not file an application for bringing the legal representatives of the deceased defendant on record within the

prescribed period as they were unable to obtain the death certificate despite having applied for the same before the Gram Sevak. It is a matter of common experience that, in certain cases, the death entry is not recorded promptly, resulting in delay in the issuance of the death certificate. In the absence of the death certificate, the plaintiffs were not in a position to file an appropriate application for bringing the legal representatives on record. Considering the explanation offered by the plaintiffs and the circumstances stated in the application, the cause shown for the delay appears to be bona fide and satisfactory. On the other hand no prejudice would be caused to the other party. Hence, to avoid multiplicity of proceedings and to elucidate the controversy between the parties once for all, the application need to be allowed subject to costs. Hence, I pass following order :

ORDER

- i. Application (Exh.34) is allowed subject to costs of Rs.200/-.
- ii. The abatement order passed against deceased defendant is hereby set-aside.

Place : Saswad.
Date : 24/06/2026.

[Satish G. Shinde]
Jt. Civil Judge Junior Division,
Saswad, Dist. Pune.

CERTIFICATE

I affirm that, the contents of this PD.F file of order are same as per the original order.

Name of the Court	:: Shri. Satish G. Shinde, Jt. C.J.J.D. & J.M.F.C., Saswad, Dist. Pune
Name of Stenographer	:: Santosh K. Panchal, Stenographer (Grade - III),
Date of Order	:: 24.06.2026
Order signed by P.O. on	:: 24.06.2026
Order uploaded on	:: 24.06.2026