

MHSI06-000010-1993

R.C.S. 56/1993
Laxman V/s. Kamalakant

ORDER PASSED BELOW EXH.308
(Passed on 27/01/2025)

- 1.** Present application has been filed by the applicant for setting aside abatement order passed against plaintiff.
- 2.** The applicant contented that, the plaintiff namely Laxman Sakharam Gavankar died on 06/01/2020 at Mouje Kolgaon, Tal. Sawantwadi. The applicant Yashodhan @ Goutam Ramchandra Gavankar is legal representative plaintiff by way of Will Deed dated 14/10/2017. The applicant is residing at Mumbai. Since March 2020 due to pandemic of Corona, he was unable to visit his permanent residence at Kolgaon. In Diwali vacation he came to Kolgaon. He visited house of his uncle i.e. the deceased plaintiff where he found file folder in a bag which was kept in a cupboard. In that file he found Will Deed of deceased Laxman Sakharam Gavankar. He has recently obtained said Will Deed. In this situation suit abated against deceased plaintiff. The delay is not deliberate. Hence, he prayed for setting aside abatement order passed against deceased plaintiff.

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3. The defendant has filed his say to this application at Exh. 321. He strongly opposed the application and submitted that, the application is false. The applicant has not produced Will Deed and death certificate of deceased on record. The reason mentioned for delay is not genuine. The Will Deed is not proved. The deceased had brother and sisters. The applicant is not only legal representative of deceased. Hence, prayed for rejection of the application.

4. Perused record and heard both sides.

5. The suit is filed for possession and permanent injunction. During pendency of the suit plaintiff namely Laxman Sakharam Gavankar died on 06/01/2020. The death was accidental. The deceased had prepared his Will on 14/10/2017. As per the said Will Deed the applicant claiming himself to be the legal representative of deceased Laxman Sakharam Gavankar. As per Sec. 2(11) of C. P. C. the legal representative is a person who in law represents the estate of a deceased person. The said Will Deed and death certificate of deceased is filed on record. Right to sue survives. The applicant failed to brought Lrs. of deceased plaintiff on record within stipulated period. The reason mentioned by the applicant seems to be genuine. Considering nature of suit it appears that the rights of legal representative of deceased are involved. Therefore, to meet the ends of justice I proceed to pass the following order:-

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ORDER

- 01 Application is hereby allowed.
- 02 Abatement order passed against deceased plaintiff is hereby set aside subject to cost of Rs.1,000/-.

Date:27/01/2025
Sawantwadi

(J.M. Mistry)
Civil Judge (Jr.Dn.),
Sawantwadi.