



CNR No. MHSI070000032007
Order passed below Exh. No.216
in R.C.S. No. 01/2007

The plaintiff has sought to set aside an abatement of suit against plaintiff No. 2. It is claimed that plaintiff No. 2 died on 16/04/2022 and as the LRs of deceased plaintiff No. 2 were not brought on record in prescribed time. The proceeding was automatically abated against him. The application is supported with an affidavit.

2. The defendants have objected the application by filing say at Exh.219. It is contended that application is false and frivolous. It is contended that the reasons advanced therein are not satisfactory. Proposed defendant no.2B and 2C are minor. Plaintiff has not filed application for appointment of guardian alongwith the present application. Therefore, prayed to reject the application.

3. Perused the application, say and record. Heard both sides.

4. On perusal of record it is clear that plaintiff no.2 has expired on 16/04/2022 and as a matter of record, the LRs were not taken on record within prescribed time, as a result the proceeding was abated. As per provision of Order XXII Rule 3(2) of CPC, it may be noted that the plaintiff had sought condonation of delay in taking LRs on record vide application (Exh.215) which is allowed by the reasons

stated therein. Needless to mention, since it is a suit in respect of immovable property, the cause of action survives after the death of plaintiff no.2. In the circumstance, the abatement is required to be set aside. Refusing the prayer would certainly lead to multiplicity of litigations. On the contrary, allowing the application would help to decide the matter on merits. However, inconvenience caused to the defendants can be compensated by imposing costs upon the plaintiff. Hence, the order :

ORDER	
1.	The application Exh. 216 is allowed, subject to payment of costs of Rs. 200/- to be paid by the plaintiff no.1 to the defendants on or before the next date.
2.	On payment of costs, the abatement of suit against plaintiff no.2 shall be set aside.
(Pronounced and dictated in open Court.)	

Place : Malvan
Date : 11/03/2026

M.K.Fakih
Civil Judge (J.D.) Malvan.