

ORDER BELOW EXHIBIT-192

This is an application by plaintiff No.D Vijaykumar Baliram More stating that, the plaintiffs have filed suit for declaration, perpetual injunction and possession. During the Writ Petition pending in the High Court, the plaintiff No.A Mathurabai Ambrushi Dighe expired on 22.08.2014, the plaintiff No.C Nilkanth Baliram More expired on 11.03.2023, the plaintiff No.E Nanda Tukaram Mane expired on 07.08.2024, the plaintiff No.F Ashok Baliram More expired on 29.10.2019. The plaintiffs A, B, C, E, F and G have given notarized power-of-attorney to the plaintiff No.D to file and try this suit on their behalf. The plaintiff No.D appearing alone since 04.11.2008 in the proceeding. The other plaintiffs never appeared in the Court, the above plaintiffs expired at Pune, Sambhaji Nagar, Pandharpur and other places. The suit was stayed as per order in Writ Petition No.10890/2013 before Hon'ble High Court and Special Leave Petition No.6249/2014 before Hon'ble Apex Court. Due to said stay, the plaintiff caused delay to take legal heirs of deceased plaintiffs A, C, E and F as defendants. There is no purposeful delay by the plaintiff. Therefore, the legal heirs of the plaintiff Nos.A, C, E and F delay for taking them on the record as defendants be condoned. Further, amendment be allowed to take legal heirs on record as defendants.

02. The defendant Nos.1A to 1F filed say contending that, application is not tenable, no procedure is followed, delay is caused, application be rejected with costs.

03. The defendant Nos.2 to 4 filed say at Exh.200. It is contended that, the plaintiff No.A, C, E and F alleged to be expired, no death certificate produced. The plaintiff himself stating that, the

plaintiff Nos.A, B, C, F and G have given P.O.A. to the plaintiff No.D, itself shows that, he is having knowledge of death of above plaintiffs. Moreover, all the plaintiffs are close relatives, the plaintiff No.D having knowledge of their death and addresses. Even in the above circumstances, the present application is filed on 10.02.2026 causing deliberate delay and negligence. The plaintiff No.D has not brought to the notice of Hon'ble Apex Court that, whether legal heirs of deceased plaintiffs are taken on record in the suit or otherwise.

04. In view of above, the suit is for declaration of ownership, if any of one plaintiff expired and legal heirs are not taken on record, the suit abates as per Order XXII Rule 4 of CPC. The matter of fact is that, the suit was abated, even then the plaintiff No.D without intimation proceeded with Special Leave Petition before Hon'ble Apex Court is matter of serious concern.

05. The plaintiff given reason for delay i.e. proceeding was stayed by Hon'ble Apex Court, is not tenable. The stay was for hearing and not for taking steps. Therefore, delay cannot be condoned, an application be rejected.

06. Heard both the Ld. Advocates at length. It is vehemently argued by Advocate for the plaintiff that, the plaintiff No.D is power-of-attorney holder for other plaintiffs. Now, he got the knowledge that, other plaintiffs are expired. Produced death certificate of Nanda Tukaram Mane i.e. the plaintiff No.E, Mathurabai Ambrushi Dighe i.e. the plaintiff No.A at Exh.199 and 198, shows that, Nanda expired on 07.08.2024 and Mathurabai expired on 22.08.2014. As matter is time bound by Hon'ble Apex Court, the death certificate of other plaintiffs

i.e. Nilkanth and Ashok could not be secured. However, that deaths date of Nilkanth and Ashok are mentioned in application. Being time bound matter, the plaintiffs legal heirs are not approaching the plaintiff No.D or not giving P.O.A.. Therefore, this application for delay condonation taking the legal heirs of deceased plaintiff Nos.A, C, E and F as defendants.

07. On the other hand, Ld. Advocate for the defendants vehemently argued that, the plaintiff No.D failed to take legal heirs on record, therefore, suit is abated. Moreover, the plaintiff No.D failed to brought this fact i.e. suit is abated, not taken legal heirs on record before the Hon'ble High Court and Hon'ble Apex Court and obtained order, it is matter of concern. The plaintiff No.D being P.O.A. and close relative of other plaintiffs, having knowledge of death of the other plaintiffs and addresses, failed to take legal heirs on record. It is settled position of law that, the suit is for declaration for ownership, one of the plaintiff expires and legal heirs are not taken on record, suit abates against all the plaintiffs.

08. In support of argument, relied upon following case law:-

Hemareddi (D) Through Lrs. Vs. Ramachandra Yallappa Hosmani and Others reported in ***(2019) 4 WBLR 470 (SC) decided on 07.05.2019***. I have gone through the above cited case law. The fact is that, an appeal was filed against judgment by the Trial Court. The relief in the suit was declared that, defendant No.1 was not adopted son and he has no title or interest over the suit property and for injunction. During pendency of the appeal, second plaintiff/appellant died. The LR's of the second appellant was not brought on record. The

appeal, therefore, abated qua the second appellant. The High Court took the view that, having regard to the decree which has been passed an appeal would abate not only qua the second appellant/plaintiff but has a whole and accordingly, it was so ordered. The said order was challenged before Hon'ble Apex Court. It came to be rejected with observation that, the order passed on 10.09.2001 by which despite the death of late brother of the appellant, permission to prosecute appeal was granted by the Court there would arise an estoppel against the order being passed holding that, the appeal has abated as a whole, cannot be accepted. The impact of death of late brother of the appellant qua the proceeding is one arising out of the incompatibility of a decree which has become final with the decree which appellate invites the Appellate Court to pass. In such circumstances, the mere fact that, the appellant was permitted to prosecute the appeal by an interlocutory order could not sufficient to tide over the legal obstacle posed by the in consistent decree which emerges as a result of failure to substitute legal representative of the late brother and the abating of appeal filed by his late brother. Consequently, we see no merit in the appeal. It is accordingly dismissed.

09. The facts of the present case in hand is that, there is no decree and appeal issue involved. An application for amendment was rejected by this Court at Exh.140, it was challenged in the Writ Petition before Hon'ble High Court, order of rejection confirmed. The said order was challenged before Hon'ble Apex Court, wherein, the proceeding was stayed. Now, directions given by Hon'ble Apex Court, allowing the plaintiff to carry out amendment as per application at Exh.140 within one month, opportunity is given to the defendants to

file additional written statement within four weeks and thereafter, decide this suit within six months. In this background, the facts of the above cited case law and the facts of the present case in hand are different, this is an application for delay condonation, therefore, at this stage, the ratio of the above cited case law will not be helpful to support the argument of defendant Nos.2 to 4.

10. In view of above argument, it is necessary to go through Order XXII (1) (2) (3) (9) (10A) of CPC which speaks that, **1. No abatement by party's death if right to sue survives.**— The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. **2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.**— Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to the effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants. **3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.**— (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit. (2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of

the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff. **9. Effect of abatement or dismissal.**— (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action. (2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit. (3) The provisions of Section 5 of the [Indian Limitation Act, 1877 (15 of 1877)] shall apply to applications under sub-rule (2). [Explanation.—Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.] **10A. Duty of pleader to communicate to Court death of a party.**— Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.]

11. In view of above provision, it is for the plaintiff No.D to take legal heirs on record of deceased plaintiffs. Now this application is for delay condonation. However, only two death certificate produced, remaining two death certificates not produced, no names of the proposed legal heirs given.

12. On this point, Ld. Advocate for the plaintiffs vehemently argued that, order below Exh.140 is of the year 2014, it was challenged before the Hon'ble High Court and thereafter, before the Hon'ble Apex Court. Now, Hon'ble Apex Court directed to dispose of suit within six months. The plaintiff No.D came to know about the death of four other plaintiffs, their legal heirs are residing at Pune, Sambhaji Nagar, Pandharpur and other places, they are not in contact of plaintiff No.D, in that circumstances, being time bound matter, this application moved for delay condonation and transposing proposed LR's of the plaintiffs as defendants.

13. No doubt, the plaintiffs and defendants Advocates are trying to co-operate this Court to dispose of the suit within the time framed by the Hon'ble Apex Court, it is to be appreciated. At the same time, the issue involved is **whether the death certificates not produced of remaining two plaintiffs, how to verify it, the issue involved of abatement against one of the plaintiff is a abatement of a whole suit or otherwise, whether Order I Rule 10 or Order XXII or Order XXIII of CPC would be applicable.** May it be, firstly, the plaintiff has to produced death certificate of remaining two plaintiffs for verification of their date of death and the name of the proposed LR's. Thereafter, the delay condonation application can be considered by giving opportunity to the defendants for argument as per objection raised.

14. In my view, even it is time bound matter, the procedural aspect cannot be given go-bye, it is for the plaintiff No.D who alleged to be P.O.A. expected to take steps for bringing legal heirs of other

deceased plaintiffs on record. As a matter is time bound, the following conditional order is passed here-in-under:-

ORDER

01. The plaintiff No.D to produce the death certificate of remaining two plaintiffs along with the names of proposed legal heirs of all four deceased plaintiffs on or before 12.03.2026, failing which further order will be passed below Exh.1.
02. This application is kept for compliance by the plaintiff No.D on 12.03.2026 and for further order.

Date:- 07.03.2026

(P. B. Lokhande)
Civil Judge, Senior Division, Barshi.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order / Judgment are same word to word, as per the original Order / Judgment.

Name of the Stenographer : Shripad N. Chilka, Steno Grade-2.
Court : Civil Court Senior Division, Barshi.
Judgment/Order signed by the P. O. on : 07.03.2026
Judgment / Order uploaded on : 07.03.2026