

**ORDER BELOW EXH.57 IN REGULAR CIVIL APPEAL NO.11 OF 2023**  
**(Somnath Bhatiya & ors. Vs. Ankush Gore & anr.)**

01. Heard Ld. Adv. for appellants, third party applicant and respondents. Perused application, say and the record.

02. This application is filed on behalf of third party applicant to take on record the legal heirs of deceased respondent No.5 Anant Ramchandra Dhekane.

03. According to him, deceased Anant Ramchandra Dhekane was plaintiff No.1 in R.C.S.No.115/2003, the decree of which is in question under this appeal. He died on 13.04.2020. Out of his legal heirs, Pradip Anant Dhekane has looked-after this matter as P.O.A. holder of plaintiff Nos.1 & 2. Actually, the entire suit was looked-after by the plaintiff No.5 Somnath Bhatiya on behalf of all plaintiffs. As such interest of all plaintiffs is not adverse to each other.

04. He alleged further that, the legal heirs of deceased plaintiff No.1 Anant Dhekane are staying at other town. They were not in contact with the plaintiff No.5 Somnath Bhatiya, so plaintiff No.5 didn't receive the information of death of the plaintiff No.1. Hence legal heirs of deceased plaintiff No.1 are not taken on record. This third party applicant is not disputing the contentions of the plaint. According to him, bringing legal heirs on record is just a formality as per procedure of law. Hence, he filed application to comply that formality.

05. Appellants filed say and supported the application. It is contended in the say that the right in personam which has been diverted in appellants, so suit cannot be abated. Hence he also requested to pass suitable order in favour of third party.

06. Respondent No.2 filed say and submitted to pass necessary order. Respondent No.1 objected the application alleging that, no reason of delay is mentioned in the application. The third party applicant has not filed with any Vakalatanama nor he is identified by any advocate. Hence, application is not maintainable.

07. Now perusal of this application shows that, the third party which is admittedly not party either to the disputed suit or to the appeal has filed this application that too without any representation by the advocate or any identification by the advocate. Moreover by this application, third party was not praying to add himself in the appeal, but he is asking to add someone else as a legal heirs of deceased respondent No.5. There is no mention under what authority, he filed present application and it is more surprising that how appellants and respondent No.2 consented to this application. If such procedure is permitted, it will be sheer abuse of process of law.

08. Further looking into the merit of the application, it is mentioned that deceased respondent No.5 died on 13.04.2020. There is no death certificate filed on record. The impugned

decree against him was passed on 16.11.2022. In short, he was not alive on the day of passing decree, rather died much before that. So as far as him is concerned, the impugned decree is against the dead person. As such there is no decree against him. Since there is no decree against him, there cannot be appeal against him or by him. Hence, no question of abatement will crop to bring his legal heirs on record. Not only this, even if abatement is presumed, the application is time barred.

09. For all above reasons, the application is just abuse of process of law, so not tenable. Hence, following order is passed.

**ORDER**

1.	Application is dismissed and disposed off accordingly.
	(Pronounced in open Court).

**Place : Satara.**  
**Dt.06.09.2024.**

**Kamala V. Bora**  
**District Judge-2, Satara**