

CNR No.MHST-0500-0441-2013

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, KARAD
ORDER BELOW EXH.52
IN
R.C.S. NO.169 OF 2013

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|--|----------------|
| 1. Shri. Hanmant Balwant Salunkhe & Ors. | ...Plaintiffs. |
| <i>Versus</i> | |
| 1. Hanmant Sitaram Salunkhe & Anr. | ...Defendants. |

Advocate Shri. M. T. Desai for the plaintiffs.

Advocate Shri. C. G. Katkar for the defendants.

Coram : S. B. Todkar,
C.J.S.D. Karad.
Date : 05/12/2025

ORAL ORDER :

This is an application filed by the legal heirs of deceased plaintiffs for setting aside abatement order deemed to be passed against the deceased plaintiffs.

2. Perused the application and detailed common handwritten say given by Ld. Advocate for the defendants at Exh.56. Heard learned advocate for both the sides.

3. As per the contents of present application, plaintiff No.1 Shri. Hanmant Balawant Salunkhe expired on 27/07/2021 at village Kival and plaintiff No.2 Sarjerao Balawant Salunkhe expired on 25/11/2021 at village Kival. When plaintiff No.1 and 2 expired at that time there was spread of Covid-19, most of the offices, transport services were closed. The family members of the plaintiffs were under shock due to the sudden death of abovenamed persons. Smt. Dwarkabai Hanmant Salunkhe was suffering illness, Balaso Balwant Salunkhe was suffering from heart pain. Therefore, plaintiffs could not

give necessary information to their advocate within time for the preparation of application to bring the legal heirs of deceased plaintiffs on record. Therefore, suit stands abated against the deceased plaintiffs. Hence, the application.

4. It appears from the record that plaintiffs have filed suit against defendants for declaration and mandatory injunction on the grounds specifically mentioned in the plaint. After service of writ of summons defendants appeared before Court and filed their written statements. My Ld. Predecessor framed issues. Thereafter on behalf of plaintiffs affidavit examination in chief of Shri. Shivaji Vishnu Salunkhe is filed on record at Exh.33. No cross order is passed on that affidavit on 23/07/2019.

5. As per Order 22 Rule 3, if party fails to make out application within period, the suit abates automatically. In the present suit, abatement of suit is not passed but it is deemed to be passed. On oath at Exh.53 Anil Hanmant Salunkhe stated the reasons for delay caused for filing present application. He has given sufficient and reasonable reason for filing present application. It appears from the statements of Anil that delay is not intentional. After the death of deceased plaintiffs right to sue survives in favour of their legal heirs and remaining plaintiffs. The legal heirs of deceased plaintiffs are proper and necessary parties. Therefore, it is necessary to bring them on record. If present application allowed, no harm, loss or prejudice will be caused to the defendants but if present application rejected, it will definitely caused harm to the plaintiffs and legal heirs of deceased plaintiffs. Therefore, to avoid multiplicity of proceedings and fair adjudication of all the issues involved in the present suit, it is just and

necessary to allow the present application. But due to the filing of present application at belated stage, the defendants are required to attend the proceeding for so many months, therefore defendants are entitled for costs of the application. Hence, in the interest of justice, I proceed to pass the following order.

ORDER

1. Application below Exh.52 is allowed subject to costs of Rs.500/- collectively payable to the defendants.
2. After payment of costs directly to the defendants or depositing in the court, order of deemed abatement against the deceased plaintiff Nos.1 and 2 will be set aside.

Date : 05/12/2025.
Place-Karad.

[S. B. Todkar]
Civil Judge S.D. Karad.