

CNR NO.MHST-0500 0493 2008
IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, KARAD
ORDER BELOW EXH.138
IN
R.C.S.No.188/2008

Mr. Ashok Rajaram Patil	...Plaintiff.
<i>Versus</i>	
1. Mr. Jaywant Rajaram Patil & Anr.	...Defendants.

Advocate Mr. J. D. Ingawale for the plaintiff.
Advocate Mr. A. T. Ghate for the defendants.

Coram : S. B. Todkar,
C.J.S.D. Karad.
Date : 06/03/2026

ORAL ORDER :

This is an application filed by the power of attorney holder of the plaintiff for setting aside deemed abatement order against the deceased defendant No.1 under article 121 of the Limitation Act, 1963 read with order XXII rule 9(2) of the Code of Civil Procedure, 1908.

2. Perused the application and common say at Exh.145.
Heard both the sides.

3. As per the contents of present application the plaintiff has filed suit against the defendants for partition and perpetual injunction. Defendant No.1 expired on 22/11/2024. After his demise to bring his legal heirs on record delay of one year and three months caused. Therefore, suit abated against defendant No.1. That delay is not intentional. Plaintiff is old one and suffering from illness. For the collection of necessary information of the legal heirs and document her time lapsed. Therefore, plaintiff could not file application within time to bring the legal

heirs of the deceased defendant No.1 on record and suit abated. Hence the application.

4. It appears from the record that, the plaintiff has filed suit against the defendants for partition, separate possession and perpetual injunction etc. on the grounds specifically mentioned in the plaint. After service of writ of summons defendant No.2 appeared before Court and filed his written statement at Exh.33, defendant No.1 filed his written statement at Exh.50 and his counter claim at Exh.75. Court has framed issues at Exh.34 on 15/01/2010 and framed additional issues on 08/04/2015. Thereafter plaintiff has filed his affidavit in chief. During pendency of suit defendant No.1 Jaywant Rajaram Patil expired on 22/11/2024, to that effect the Ld. Advocate for the defendants filed pursis at Exh.130 and 131. As the plaintiff failed to take necessary steps within 90 days or made an application to bring legal heirs of deceased defendant No.1 on record, the suit is deemed to be partly abated against the deceased defendant No.1 as per order 22 rule 4 of the C.P.C. Thereafter on behalf of the plaintiff applications below Exh.134, 136 and 138 filed for condonation of delay, abatement of set aside and to bring the legal heirs of deceased defendant on record. The power of attorney holder of the plaintiff viz. Mrs. Kusum Ashok Patil at Exh.139 on oath has stated / given sufficient reasons for setting aside abatement. After the death of defendant No.1 right to be sued survives against the remaining defendants as well as the legal heirs of the deceased defendants. More over in partition suit all parties- both plaintiffs and defendants are considered co owners in the property. Defendants can claim their share in the written

statement (acting as a plaintiff). Therefore, I found substance in the submission made in the present application. Hence, I proceed to pass the following order.

ORDER

1. Application Exh.138 is allowed.
2. The deemed abatement of suit against the deceased defendant No.1 is here by set aside.

Date : 06/03/2026.
Place-Karad.

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