

ORDER BELOW EXH. 112 IN R.C.S. 16/2010
CNR NO. MHTH17-000009-2010

(Farooq Dhanani Vs. Gangubai Bhoir and others)

1] Plaintiff moved the application for set aside the abatement of suit against defendant no. 3.

2] Learned advocate Shri. D. P. Bhatt for plaintiff submitted that defendant no. 3 died on 08.05.2018 left behind him the legal heirs mentioned in the application. He further submitted that plaintiff get the information about the death of defendant no. 3 on last date and therefore, plaintiff could not move the application for impleading legal heirs within 90 days. Therefore, suit is abated against defendant no. 3. In order to decide the suit on merit, the legal heirs of defendant no. 3 are necessary party. He further submitted that if application is rejected, great prejudice would cause to plaintiff and suit will not adjudicate on merit. Therefore, plaintiff filed this application to set aside the abatement.

3] Learned advocate Shri. Pandit for defendant no. 4 and 5 submitted that plaintiff has not taken effective steps to bring the legal heirs of defendant no. 3. He further submitted that there is no merit in this application. Hence, he submitted that it be rejected.

4] The subject matter of the suit is immovable property. Therefore, cause of action is survived against legal heirs of defendant no.3. Therefore, they are necessary party to this suit. Without impleading them, suit cannot be adjudicated. If application is rejected,

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the suit will not decide on merit and the effective decree cannot be passed. In order to decide the matter on merit, the deemed abatement needs to be set aside. Hence, I pass the following order.

ORDER

- 1] Application is allowed.
- 2] The deemed abatement against defendant no.3 is set aside.

Sd/-

Palghar
Date : 17.01.2019

(D. U. Dongare)
Jt. Civil Judge, S.D.
Palghar.

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