



COMMON ORDER BELOW EXH. 294 and 296

(Passed on 20/12/2025)

Perused the applications and say filed by defendant Nos. 2 to 4.

2. After perusal of record it also appears that the present suit is remand back for afresh hearing as per judgment passed in R.C.A. No.117/2009 dated 18.04.2024 by the Hon'ble District Court, Washim.

3. After perusal of record it appears that defendant Nos. 1, 5, 6, 10, 16, 24 to 26, 29, 33 & 41 were died.

4. Notices were issued to defendant Nos. 32, 39, 40, 42, 44 and 46 on Court motion, even after service of notices said defendants failed to appear in the present suit, therefore, present applications are proceeded without say of them.

5. Till today, Court motion notices have not served on defendant Nos. 7 to 9, 11 to 15, 17 to 23, 27, 28, 30, 31, 34 to 38, 43, 45.

6. Heard learned advocate Mrs. V. R. Lahoti for plaintiffs. Also heard learned advocate Mr. R. S. Joshi for defendant Nos.2 to 4.

7. After perusal of record it appears that present suit filed by plaintiffs for partition, separate possession and mense profit.

8. Order 22 Rule 1 of the Code Of Civil Procedure is clear that death of the plaintiff or defendant shall not cause the suit to abate if right to survives. As per Article 121 of the Limitation Act, 1963 Sixty days period of limitation prescribed for setting aside an order of abatement and from the date of abatement time begins to run. The said provision of the law is not penal in nature. It is a rule of the procedure that substantial right of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspect of law.

9. Deceased plaintiff No. 6 Sk. Asim Sk. Dagadu is survived by Jainaba Sk. Asim, Sk. Akaram Sk. Asim, Sk. Paravez Sk. Asim and Aarzoo Parveen Sk. Asim.

10. If an application is allowed no prejudice will cause to defendants. Per contra it will avoid the multiplicity of the proceedings. For fair trial it is necessary to give an opportunity to plaintiffs to bring legal heirs of deceased plaintiff No. 6 Sk. Asim. If an opportunity is not given to plaintiffs it will cause hardship to them. Hence, with a view to grant an opportunity to plaintiffs to contest the suit on merit it will be just and reasonable to condone the delay for setting aside abatement and taking LR's as well as setting aside abatement and taking LR's of deceased plaintiff No.6 Sk. Asim. Accordingly, plaintiffs are permitted to amend the plaint. So, in the interest of justice, I proceed to pass the following order.

ORDER

1. Applications at Exh.294 and 296 are allowed subject to costs of rupees 2000/- (Two Thousand Only) payable to defendants.
2. Delay caused for setting aside an abatement of deceased plaintiff No.6 Sk. Asim Sk. Dagadu is hereby condoned.
3. An abatement of deceased plaintiff No.6 Sk. Asim Sk. Dagadu is hereby set aside.
4. Delay in bringing LR's of deceased plaintiff No.6 Sk. Asim Sk. Dagadu is hereby condoned.
5. Plaintiffs are allowed to bring the legal representatives of deceased plaintiff No.6 Sk. Asim Sk. Dagadu on record within 14 days from the date of this order.
6. Plaintiffs are permitted to amend the plaint within 14 days from the date of this order.
7. Plaintiffs shall supply fresh copy of plaint on or before next date without any fail.
8. If plaintiffs are failed to comply the present order then the present order is automatically set aside.

(Pronounced and dictated in open Court)

(M.W.A.M.J.Sheaikh)

Date : 20/12/2025.

Civil Judge Junior Division, Malegaon.

CERTIFICATE

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

Name of Stenographer	C. R. Lande (Grade III)
Name of Court	Shri. M. W. A. M. J. Sheaikh, C.J.J.D. & J.M.F.C., (Court No.1), Malegaon, Distt. Washim.
Date of Dictation	20/12/2025
Judgment/Order signed by the PO on	20/12/2025
Judgment /Order uploaded on	20/12/2025