

MHWS100014682014



**ORDER BELOW EXH.40 IN RCS NO.25/2020**

Madan Sitaram Lade Vs. Bhagwan Pralhad Lade  
Passed on 09<sup>st</sup> October, 2024

01. The legal representatives (In short LR's) of deceased plaintiff No.2 seeking permission to bring them on record. They have filed the death certificate of deceased plaintiff No.2 below list of document at Exhibit-37.

02. It is their submission that, the right to sue survives against them. The matter is for the perpetual injunction. Hence, prayed to bring them as a LR's of the deceased plaintiff No.2.

03. The Ld. Advocate for the defendant strongly opposed the application that, there is no any document filed on record which shows that the applicants are the LR's of the deceased plaintiff No.2

04. Heard both the sides. The death of the deceased plaintiff No.2 is not disputed. This is the suit for perpetual injunction. In cases of perpetual injunction also the right to sue survives in favour of the LR's of the plaintiff No.2. Plaintiff Nos.1 to 3 have filed the suit for perpetual injunction in respect of the suit property i.e. Gut No.175 to the extent of 054 Are. Upon the death of plaintiff No.2, the right to sue survives against the defendants. In such circumstances, it is better to rely on the judgment of the Hon'ble Karnataka High Court in the case of the **Chenniaah @ Doddachennaiah Since Deceased By His LR's Gangaiah & Ors. Vs. Bylappa Since Dead By LR's Smt. Naraasamma & Ors.. Reported In 2022 Live Law (Kar) 149** wherein it was held that :-

“There is absolutely nothing indicated in provision of part III or Part IV of the Specific Relief, which even remotely indicates that an

injunction is a right which is personal to the plaintiff. The right to enjoy the possession of an immovable property is not a right that can be enjoyed only by one person and it is not a right that cannot survive beyond the life of that person. The right to enjoy property is a transferable right and thus is not limited to any one person. On the death of a person, the right to enjoy possession of that property can and does survive to his legal representative. A person in whose favour the rights of a property devolve by operation of law or by way of testament would have a legal representative since he acquires a right to intermeddle with the estate of the deceased. If it is to be held that in a suit for injunction, whenever a plaintiff or defendant dies, the suit would abate, it would be virtually creating never ending cycle of litigation, which obviously would result in an absurd situation where a party to the suit is to be perennially litigating in courts. In a suit for injunction in relation to an immovable property, obviously, the legal representative of the deceased would enjoy the relief that the original party (plaintiff or defendant) would have been entitled to by virtue of the succession or inheritance in their favour and thus the suit would not abate as would have to be continued by bringing the LR's of the deceased on record.”

04. Considering the factual aspect and right to sue survives the applicants needs to be taken on record as the LR's of deceased plaintiff No.2. Hence, permission is granted to bring the LR's of the deceased plaintiff No.2 on record. Thus, the following order :-

**ORDER**

1. Application is hereby allowed.
2. Permission is granted to applicant bring the LR's of the plaintiff on record of the suit within stipulated period from the date of this order.
3. No order as to  
(Dictated and pronounced in open Court)

Place : Malegaon  
Date : 09.10.2024

[ Pravin U.Kulkarni ]  
Jt. Civil Judge (J.D.) Malegaon  
Dist. Washim.

**CERTIFICATE**

I affirm that, contents of this PDF file is same word to word, as per original Order :-

1. Name of the Stenographer	:-	<b>Shivam B.Patange (LG)</b>
2. Court Name	:-	Jt. CJJD & JMFC, Malegaon
3. Order dated	:-	09.10.2024
4. Order Signed by the P.O.	:-	09.10.2024
5. Order uploaded on	:-	09.10.2024