

MHWS100004902020



R.C.S.No. 25/2020

Madan & Ors. Vs. Bagwan

COMMON ORDER BELOW EXH. 42, 43 and 44

(Passed on 10/06/2026)

Perused the applications and say filed by the defendant.

2. Heard learned advocate Mr. R. S. Joshi for applicants. Also heard learned advocate Mr. S. S. Magar for the defendant.
3. After perusal of record it appears that present suit filed by plaintiffs for perpetual injunction.
4. 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.
5. Deceased plaintiff No. 3 Sopan Sitaram Lade is survived by Bebi Sopan Lade, Anita Gajanan Bajad, Seema Datta Wakudkar and Sagar Sopan Lade.
6. If an application is allowed no prejudice will cause to the defendant. Per contra it will avoid the multiplicity of the proceedings. For fair trial it is necessary to give an opportunity to applicants to bring legal heirs of deceased plaintiff No. 3 Sopan. If an opportunity is not given to applicants it will cause hardship to them. Hence, with a view to grant an opportunity to applicants 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.3 Sopan. Accordingly, applicants are permitted to amend the plaint. So, in the interest of justice, I proceed to pass the following order.

ORDER

1. Applications at Exh.42, 43 and 44 are allowed subject to costs of rupees 1,000/- (One Thousand Only) payable to the defendant.
2. Delay caused for setting aside an abatement of deceased plaintiff No.3 Sopan Sitaram Lade is hereby condoned.
3. An abatement of deceased plaintiff No.3 Sopan Sitaram Lade is hereby set aside.
4. Delay in bringing LR's of deceased plaintiff No. 3 Sopan Sitaram Lade is hereby condoned.
5. Applicants are allowed to bring the legal representatives of deceased plaintiff No. 3 Sopan Sitaram Lade on record within 14 days from the date of this order.
6. Applicants are permitted to amend the plaint within 14 days from the date of this order.
7. Applicants shall supply fresh copy of plaint on or before next date without any fail.
8. If applicants are failed to comply the present order on or before next date then the present order is automatically set aside.

(Pronounced and dictated in open Court)

(M.W.A.M.J.Sheikh)

Civil Judge Junior Division, Malegaon.

Date : 10/06/2026.

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	T. R. Ugale (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	10/06/2026
Judgment/Order signed by the PO on	10/06/2026
Judgment /Order uploaded on	10/06/2026