



COMMON ORDER BELOW EXH.17 AND 19
RCS NO.80/2019

Lalitkumar Madhukar Kirtankar Vs. Narayan Dattatrya Borchate

By filing present application the applicants seeking permission to set aside deemed abatement of suit, condonation of delay as well as bringing legal representatives (in short LR's) of deceased defendant No.1 namely Narayan Dattatrya Borchate on record. Perused the present applications it shows that, defendant No.1 is dead 18.11.2021. Notice was also sent to the LR' of defendant No.1 and they are appeared by filling *Vakalatnama* at Exh.16. But they not filed their say. Hence, application is proceeded without say against them.

02. It is their submission that, the right to sue survives against the defendants. The matter is for possession and inquiry for compensation. Hence, prayed to bring them as a LR's of deceased defendant No.1.

03. The defendants filed their say and prayed suitable order passed.

04. Heard learned advocate for the applicant. The death of the deceased defendant No.1 is not disputed. This is the suit for possession and inquiry for compensation also the right to sue survives in favour of the LR's of defendant No.1. 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.”

06. Considering the factual aspect and right to sue survives the applicants needs to be taken on record as the LR's of deceased defendant No.1. Application is not within the limitation. Hence, permission is granted to bring the LR's of deceased defendant No.1 on record. Thus, I pass the following order :-

ORDER

1. Application is hereby allowed.

2. Delay is hereby condoned and deemed abatement of the suit against the deceased defendant No.1 is hereby set aside.
3. Permission is granted to the applicants to bring LR's of deceased defendant No.1 on record of the suit within stipulated period from the date of this order.
4. The applicants are hereby directed to file amended copy of the plaint on record within stipulated period from the date of this order.
5. There is no order as to cost.
(Dictated and pronounced in the open court)

Place : Malegaon
Date : 17.03.2026

[**A.S.Koshti**]
Jt. Civil Judge (J.D.) Malegaon
Dist. Washim.

<u>CERTIFICATE</u>		
I affirm that, contents of this PDF file is same word to word, as per original Order :-		
1. Name of the Stenographer	:-	Shivam B.Patange (LG)
2. Court Name	:-	Jt. CJJD & JMFC, Malegaon
3. Order dated	:-	17.03.2026.
4. Order Signed by the P.O.	:-	18.03.2026.
5. Order uploaded on	:-	18.03.2026.