



Order Below Exh.46
(Passed on 09/02/2026)

01) This is an application filed for setting aside abatement and amendment of plaint filed Under Order 22 Rule 4 and Order 6 Rule 17 of the Civil Procedure Code.

02) Perused the application and reply. According to the plaintiffs, during the pendency of suit, plaintiff No.2 is died on 02/09/2024. He is survived by three legal heirs. They are necessary parties to the suit. Thus, it is necessary to bring them on record as legal heirs of deceased plaintiff No.2. The plaintiffs have no knowledge of the legal procedure. Therefore, the legal heirs of deceased plaintiff No.2 could not be brought on record within time. Thus, the suit is formally abated against plaintiff No.2. The plaintiffs want to bring the legal heirs of deceased plaintiff No.2 on record. They also wants to make amendment to that effect in their plaint. Lastly, they payed to allow the application.

03) The defendants filed reply and strongly opposed the application. They contended that the suit is for evidence of the plaintiffs. They have not filed the present application within limitation. The application is filed with intent to prolong the matter. Lastly, they prayed to reject the application.

04) Heard, the learned advocate for the plaintiffs and defendants. They submitted as per the contentions of the application and reply. The application is supported by affidavit. The facts stated therein are stated on oath. Therefore, the reasons mentioned in the application seems to be genuine. The application

is supported by death certificate of plaintiff No.2. It appears that, plaintiff No.2 is died on 02/09/2024.

05) It is pertinent to that, the suit is for declaration and permanent injunction in respect of immovable property. The right to sue remain survived with the legal heirs of deceased plaintiff No.2. Admittedly, the suit is formally abated against plaintiff No.2. Therefore, the abatement needs to be set aside. Needless to say that the setting aside abatement is procedural aspects. The court needs to take liberal approach towards the same. Further, the defendants will not going to prejudice if, the application is allowed. On the contrary, if the application is rejected, the plaintiffs will be seriously prejudice. Further, to decide the real controversy between the parties, it is necessary to allow the application. Moreover, the plaintiffs are entitled to amend the plaint in respect of the same. Thus, considering the above findings, the present application is liable to be allowed. However, considering the delay on the part of the plaintiffs cost needs to be saddle on them. Hence, I pass the following Order;

Order

- 1] The application is allowed subject to costs of Rs.500/- (Five Hundred Only) to be paid to the defendants.
- 2] Subject to payment of aforesaid costs, the abatement is set aside and the plaintiffs are permitted to carry out necessary amendment within 14 days of this order.

Date : 09/02/2026,

(Shahaji D. Bhosale)
Jt. Civil Judge (Jr.Dn.),Wani.

I, Abhay Bhoyar Stenographer of Jt. Civil Judge (Jr.Dn.) & J.M.F.C. Wani, affirm that, the contents of this PDF are same words for words, as per the original order.