

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR**

**WRIT PETITION NO.6393 OF 2014**

Santosh Govind Kathole,  
Aged : 55 years, occupation : agriculturist,  
R/o Shegaon, tahsil Shegaon, district Buldhana. .... **Petitioner.**

**:: V E R S U S ::**

1. Vinayak Namdeo Kathole, Dead.  
Aged : 78 years, occupation agriculturist,  
R/o Shegaon, taluka Shegaon, district Buldhana.

**LRs of respondent No.1**

1(i) Jayant s/o Vinayak Kathole (son)  
Aged : 64 years, occupation : retired.

1(ii) Vijay s/o Vinayak Kathole (son)  
Aged : 57 years, occupation : service  
(1)a & (1) B r/o Fule Nagar, Shegaon,  
taluka Shegaon & District Buldhana.

1(iii) Sau.Shaila w/o Ramnbau,  
Khodaskar (daughter)  
Aged : 61 years, occupation household,  
R/o Chatri – talav road,, SBI colony,  
Dastur Nagar, Amravati.  
Taluka district Amravati.

2. Shankar Namdeo Kathole,  
Aged : 40 years, occupation agriculturist,  
R/o Shegaon, taluka Shegaon, district Buldhana.

3. Shakuntala Namdeo Kathole,  
(since dead, LR's were not brought on record by plaintiff)

4. Pramila Purshottam Jawarkar,  
dead through LRs

4-A] Sanjay Purshottam Jawarkar,  
Aged : 45, occupation : service, r/o  
Bharat Nagar, in front of Laxami  
Narayan institute, Amravati Road,  
Nagpur, taluka and district Nagpur.

5. Kamal Ramrao Kshirsagar,  
dead through Legal Heirs-

5-A] Dr. Anil Ramrao Kshirsagar,  
Aged : 45 years, occupation : profession,  
R/o Dongaon, taluka Mehekar,  
District Buldhana.

5-B] Avinash Ramrao Kshirsagar,  
Aged : 48, occupation : service,  
~~R/o Sharda Nagar, Amravati,~~  
~~Taluka & district Amravati.~~

Dr.Avinash Ramrao Kshirsagar,  
R/o Khaperde Bagicha Amrvati,  
Taluka & district Amravati.

5-C] Vidya Manohar Malpe,  
Dead by Legal Heirs-

5-C1] Manoharrao Venkatrao Malpe,  
Adult, occupation : agriculturist,  
R/o Loni, taluka Morshi, district Amravati.

5-C2] Rajendra Manoharrao Malpe,  
Adult, occupation : agriculturist,  
R/o Loni, taluka Morshi, district  
Amravati.

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5-C3) Monika Aniruddha Belsare,  
Adult, occupation : household work,  
R/o Adgaon, taluka Morshi, district  
Amravati.

5-D] Ku.Kokila Tulsidas Golhar,  
Aged : 40, occupation : household,  
~~R/o Patrakar colony, ramdaspath~~  
~~Nagpur, taluka & district Nagpur.~~  
Kokila Tulsidas Golhar,  
R/o 1/4 Patrakar Colony,  
Wasant Nagar,  
Near Dikshabhumi Nagpur,  
Taluka & district Nagpur.

5-E] Sandhya Narendra Pharakhade,  
Aged : adult, occupation : household,  
R/o Benoda (Shahid), taluka Morshi,  
District Amravati.

5-F] Alka Gangadhar Chaudhari,  
Aged : Adult, occupation : household,  
~~R/o Hambarde building,~~  
~~Rajkamal Chowk, Amravati,~~  
~~Taluka & district Amravati.~~

Alka Gangadhar Chaudhary,  
R/o Hambarde building,  
Rajkamal Chowk, Amravati,  
Taluka & district Amravati.

6. Vasant Namdeo Khatole,  
Since dead legal heirs were not  
brought on record by the plaintiff.

7. Vishwash Bajirao Chuke,  
Aged : adult, occupation : nil, r/o Valgaon,  
Taluka & district Amravati.

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8. Sushila Raghunathrao Hadole,  
Since dead by Legal heirs-

8-A] Nalinibai Keshavrao Bhalekar,  
Adult, occupation household,  
Kalambeshwar, taluka  
Kalambeshwar, district Nagpur.

9. ~~Lilabai Mahaderaao Hederao,  
Adult, occupation household, r/o  
Kasbegavan, taluka Dariyapur, district  
Amravati.~~

10. ~~Prafulbhai Lattubai,  
Adult, occupation business, r/o Gandhi  
road, Akola, taluka & district Akola.~~

11. ~~Tilakkumar Lattubhai,  
Adult, occupation business, r/o Gandhi  
Road, Akola, taluka & district Akola.~~

12. ~~Navinkumar Lattubai,  
Adult, occupation business, r/o Gandhi  
road, Akola, taluka & district Akola.~~

13. Dilip Lalwani,  
Adult, occupation business, r/o Gandhi  
road, Akola, taluka & district Akola.

14. Rajendra alias Rajesh  
Govindrao Kathole, adult occupation :  
business, r/o Gandhi Road, Akola, taluka  
& district Akola.

15. Usha Vishwanath Kavitkar,  
Adult, occupation household, r/o Anjangao,  
District Amravati.

16. Nisha Subhas Tadas,  
Adult, occupation household, r/o

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Gorakshan road, Akola, taluka & district  
Akola.

17. Ujavala Vilas Kavitar,  
Adult, occupation household, r/o c/o Dr.  
Kavitar, Anjangao Surji, taluka Anjangao  
District Amravati.

18. Anusayabai Govindrao Kathole,  
Adult, occupation household, r/o M.G.  
Road, Akola, taluka & district Akola.

..... **Respondents.**

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Shri U.J.Deshpande, Counsel for the petitioner.  
Shri Z.Z.Haq, Counsel for respondent No.1(ii).

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**CORAM** : **V.M.DESHPANDE, J.**  
**DATE** : **JANUARY 19, 2021**

**ORAL JUDGMENT**

1. Heard learned counsel Shri U.J.Deshpande for the petitioner and learned counsel Shri Z.Z.Haq for respondent No.1(ii). **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned counsel for parties.

2. One Vinayak was original plaintiff. He filed a suit for partition and separate possession. The present petitioner was joined as defendant No.6 being his cousin. The plaintiff also joined one of his sister Sushila as defendant No.9. During the pendency

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of the suit, defendant t No.6 present petitioner filed a Pursis on 17.9.2014 giving intimation about death of defendant No.9 Sushila. In pursuance to the said intimation, plaintiff Vinayak filed an application under Order XXII Rule 4 of the Code of Civil Procedure for bringing legal representatives of Sushila on record. The said application is allowed by order dated 19.9.2014. The said order is under challenged in this writ petition.

3. Contention of learned counsel for the petitioner is that defendant No.9 Sushila was real sister of plaintiff Vinayak who died during the pendency of this writ petition. It is submission of learned counsel for the petitioner that the application does not disclose that factum of date of death was not within knowledge of the plaintiff. He submits that Sushila being the real sister of Vinayak he must knowing the date of her death. He, therefore, submitted that application under Order XXII Rule 4 of the Code filed by the original plaintiff Vinayak was barred by limitation and there was no application for condonation of delay in bringing legal representatives of Sushila on record.

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4. I find some force in the submission of learned counsel for the petitioner that Sushila being real sister of Vinayak date of her death must be within his knowledge. However, application under Order XXII Rule 4 was filed only after the intimation given by petitioner under Order XXII Rule 10-A of the Code that Sushila died.

5. In this view of the matter, this writ petition can be disposed of in following terms:

ORDER

(1) Order dated 19.9.2014 passed below Exhibit 138 in RCS No.123/2012 is hereby quashed and set aside.

(2) Legal representatives of original plaintiff Vinayak is permitted to file a fresh application for condonation of delay, if there is any delay, to support application under Order XXII Rule 4 of the Code. After such application is filed, learned Judge below shall decide the said application and give fresh decision on Exhibit 138.

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(3) Needless to mention that period from 18.11.2014 till today shall be excluded from computation of delay in view of pendency of this writ petition before this court.

The writ petition is disposed of. Rule is made absolute in aforesaid terms. No costs.

**JUDGE**

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