

(1922) 06 BOM CK 0020**Bombay High Court****Case No:** None

Lakshmibai Joshi and Others

APPELLANT

Vs

Yeshvant Vithal Bagkar

RESPONDENT

Date of Decision: June 15, 1922**Citation:** (1923) ILR (Bom) 92**Hon'ble Judges:** Lallubhai Shah, J; Crump, J**Bench:** Division Bench**Judgement**

Lallubhai Shah, Kt., A.C.J.

1. Two points have been urged in support of this application. First, it is urged that the defendant's heirs were brought on the record more than three months after the death of the original defendant; and that they should not have been so brought on the record without formally setting aside the abatement of the suit which resulted in consequence of the lapse of three months from the date of the defendant's death. We do not think that there is any substance in this point. The application was made within six months, which was the period allowed by the Indian Limitation Act of 1908, and the change in the period of limitation which was effected by Act XXVI of 1920 may not have been and probably was not known to the parties. The delay was rightly-excused and the omission to set aside the abatement" was a formal defect not affecting the merits of the order. Secondly, it is urged that after the parties were brought on the record, the lower Court wrongly allowed the plaintiff to withdraw this suit with liberty to bring a fresh suit on the 28th July 1921. The application for that purpose was based upon the ground that notices on the heirs could not be served. This is hardly a ground for allowing the plaintiff to withdraw a suit with liberty to bring a fresh suit. It was a suit of 1919 and in July 1921 the heirs were already on the record. There is no reason why the plaintiff should not have made proper efforts to serve the notices upon the heirs and proceeded with the suit. In any case no valid ground for allowing the withdrawal with liberty to bring a fresh suit has been made out. We set aside the order allowing the plaintiff to withdraw

the suit and direct the papers to be sent back to the trial Court in order that the suit may be proceeded with and tried according to law.

2. Costs of this application to be costs in the suit.