

02.09.2024

Present : Mr. Vipin Rana, Ld. Counsels for the appellants.
Mr. Abhay Pratap Singh, Ld. Counsels for the
respondents no. 2 and 3 alongwith respondents no. 2
and 3 in person.

Reply to the applications under Order 22 Rule 3 of CPC and under Section 5 of the Limitation Act have been filed. Copies have already been supplied.

The application under Section 5 of the Limitation Act is taken up for consideration.

Appellant no. 1 died on 25.09.2023.

Applications under Order 22 Rule 3 of CPC and under Section 5 of the Limitation Act have been filed on 22.08.2024. Delay of 236 days is sought to be condoned.

It is stated that the delay took place since the death certificate was issued belatedly. It is also pleaded that the appellant no. 2 was engaged in rituals after the death of appellant no. 1.

It is submitted that marriage of the daughter of appellant no. 2 was also scheduled and the appellant no. 2 was busy in the rituals and ceremonies of his daughter.

Reply to the applications have been filed. Applications have been opposed.

It is pointed out that even after the demise of the appellant no. 1 on 25.09.2023, the applicants have been regularly appearing in the Court in person and through advocate. It is pleaded that death certificate was issued on 07.10.2023. It is averred that nothing prevented the applicants to file the applications within prescribed time period.

Reliance is placed on the decision of the Hon'ble Supreme Court in the case of Shanti Devi Vs. Kaushalaya Devi Civil Appeal no. 7011/2025.

Arguments have been heard and record has been perused.

It is stated in the death certificate that it was issued on 07.10.2023.

In view of this date of issuance, the plea taken in the application that the death certificate was issued belatedly appears to be false.

On asking by the Court, Ld. Counsel for the applicants has disclosed that the daughter of the appellant no. 2 got married in January, 2024.

On 02.03.2024, Ld. Counsel for the appellants requested for an adjournment to bring on record legal heirs of appellant no. 1. Application for bringing on record the legal heirs was not filed within 90 days even from 02.03.2024.

By then, the wedding of the daughter of the appellant no. 2 was long over and copy of the death certificate was available with the applicants.

In the above case of Shanti Devi Vs. Kaushalaya Devi relied upon by Ld. Counsel for the respondents, it was observed that since the applicants were aware of the demise of the party and pendency of the case, there was no reason for belatedly filing of application for bringing on record the legal representatives.

It was held that delay cannot be condoned on insufficient grounds.

On expiry of 90 days from date of demise, there was automatic abatement qua appellant no. 1. The applicants have not even sought setting aside of abatement.

The Court is of the view that sufficient grounds have not been disclosed for condonation of delay.

Therefore, the applications under Section 5 of the Limitation Act r/w Section 151 CPC is dismissed.

Since this application has been dismissed, the application under Order 22 Rule 3 r/w Section 151 CPC is also dismissed since it has been filed beyond the prescribed period of limitation.

The case as filed by appellant no. 1 stands abated. However, it shall continue as filed by appellant no. 2.

Reply to the application for early hearing of the case has not been filed. For the reasons stated in the said application, the application is allowed. The date already fixed i.e. 01.10.2024 is hereby canceled.

The application of the respondent no. 2 under Section 151 CPC for permission for renovation of the property is taken up for consideration.

Now the application of the respondent no. 2 for permission to renovate the property is taken up for consideration.

The respondent no. 2 claims that the property bearing no. WZ-101, Village Todapur, Post Office Pusa, Delhi was owned by the common ancestor of the appellants and the respondents and after demise of the ancestor, the parties are co-owners of the property.

The appellants claim to be the sole owners of the property. It is submitted that the ancestor had given another property to the respondent and the above property was given to the appellant.

During pendency of the suit, the respondents carried out constructions in the above property. However, on 25.04.2023, Ld. Predecessor of this Court restrained the respondents from carrying out further construction in the property.

The application under consideration has been filed on the ground that the respondents have been living in the above property. It is pleaded that the respondents are living in inhuman conditions. It is stated that the property needs plastering and flooring for structural stability and in order to make it habitable.

It is stated that the respondent will not claim any equity for the said renovation. It is pointed out that the respondents have been restrained from carrying out further constructions.

From the photographs filed by the respondents, it is evident that raw structure has already been constructed in the above property. No prejudice will be caused to the appellant, if the respondent is permitted to plaster the walls and do the flooring. Even if the Court later forms an opinion that the

property is solely owned by the appellant, mere carrying out of plastering and doing of flooring will not affect the appellant's right to get the property.

However, if the permission sought is not granted, it may damage the construction which has already been carried out.

In view of the above observations, the application is allowed and permission is granted to the respondents to plaster the walls and do the flooring work.

It is clarified that the respondent shall not carry out more work than has been permitted hereinabove.

The respondents shall file a video and photographs of the entire structure as it exists today by 03.09.2024.

Copy of the same be provided to the Ld. Counsel for the appellant within three days from today.

To come up for arguments on appeal on 17.02.2025.

(Shirish Aggarwal)
District Judge-03
Patiala House Courts, New Delhi
02.09.2024