
REGULAR CIVIL SUIT NO. 96 OF 2018

Order below application Exh.31 :-

In view of the order, condoning the delay in preferring the present application by setting aside the abatement qua the plaintiff, passed below applications at Exh.29 and Exh.30, the present application is taken up for hearing today.

By way of filing the present application under Order 22 Rule 3 of the Code of Civil Procedure, the applicants have prayed to join them as heirs and legal representatives of deceased plaintiff – Rabiya Bashir Malek, on the record of the present suit.

Read this application, plaint and other related papers on record. Heard Mr. A.P. Shah, learned advocate appearing for the applicants - the proposed heirs of the deceased plaintiff and Mr. M.S.Kanungo, learned advocate & Mr. I.M. Sardar, learned advocate appearing for the defendants.

Having heard the learned advocates appearing for the respective parties and on perusal of the entire record, it appears that the plaintiff has filed the present suit for Administration of the properties of deceased Rasul Murad Malek as per the Muslim law and also for permanent injunction against the defendants. However, during the pendency of the present suit, the plaintiff – Rabiya Bashir Malek expired on 19th June, 2019 at Village : Nani Naroli, Taluka : Mangrol, District : Surat and the applicants are the heirs and legal representatives of deceased plaintiff – Rabiya

Bashir Malek. The applicants have produced the copy of the death certificate of the deceased plaintiff – Rabiya Bashir Malek at Mark 26/1 and on perusal of the said documentary evidence, it clearly appears that the plaintiff – Rabiya Bashir Malek expired on 19th June, 2019 at Village : Nani Naroli, Taluka : Mangrol, District : Surat and as such the proposed applicant Nos. 1/1 to 1/6 are the sons and daughters of deceased plaintiff and thus the present applicants are the heirs and legal representatives of deceased plaintiff – Rabiya Bashir Malek. It further transpires from the record that the applicants have categorically made averments for occurring the delay of 1 years 8 months and 3 days, as they could not taken any action for joining them as the heirs of the deceased plaintiff on the record of the present suit within the stipulated time and accordingly, they have preferred separate applications for condonation of delay and for setting aside the abatement vide Exh.29 and Exh.30 and the said applications have been granted by this court today by condoning the delay and setting aside the abatement.

It appears that the heirs and legal representatives of deceased plaintiff are proper, necessary and interested parties in the present suit and if they are not being permitted to join as parties in the present suit, the object of the filing the present suit by the deceased plaintiff would be frustrated and it would cause irreparable loss and injury to the heirs of deceased plaintiff and on the other hand, if they are brought on record, there would be no substantial change in the nature of the present suit.

Considering the facts and the circumstances of the present case, I am of the view that by adopting a liberal and pragmatic approach, the present application is required to be allowed and, therefore, in the interest of justice, I pass the following order :-

==: O R D E R ==:

This application Exh. 31 is hereby ALLOWED.

The applicants are permitted to join as the heirs and legal representatives of the deceased plaintiff – Rabiya Bashir Malek, as Plaintiff Nos. 1/1 to 1/6, on the record of the present suit, as mentioned in para 1 of the present application, as prayed for.

Amendment be carried out accordingly on or before next returnable date. The applicants are also directed to furnish the amended copy of the plaint on next date without fail. No order as to costs.

Put up on 29th September, 2023.

Pronounced in the open Court on this 15th day of September, 2023.

Date: 15th September, 2023. (Rajendra Ghanshyambhai Barot)
Principal Senior Civil Judge
Mangrol, District : Surat
Judge Code : GJ00572