
REGULAR CIVIL SUIT NO. 96 OF 2018

Order below application at Exh.37 :-

1. In view of the order, condoning the delay in preferring the present application by setting aside the abatement qua the defendant No.1 – Banubibi Rasul Murad, passed below application at Exh.34, the present application is taken up for hearing today.

2. By way of filing the present application under Order 22 Rule 4 of the Code of Civil Procedure, the plaintiff has prayed to join the heirs and legal representatives of deceased defendant No.1 – Banubibi Rasul Murad, on the record of the present suit.

3. Read this application, plaint and other related papers on record. Heard Mr. A.P. Shah, learned advocate appearing for the plaintiffs and Mr. M.S.Kanungo, learned advocate & Mr. I.M. Sardar, learned advocate appearing for the defendants.

4. Having heard the learned advocates appearing for the respective parties and on perusal of the entire record, it appears that the original 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 defendant no.1 - Banubibi Rasul Murad expired on 24th

August, 2019 and, therefore, the heirs and legal representatives of the deceased defendant No.1 are required to be brought on record of the present suit within the period of 90 days after the death of the concerned defendant as per the provisions of Art.120 of the Limitation Act, however, since the defendant no.1 also expired after the death of the plaintiff, the heirs and legal representatives of original plaintiff could not bring the heirs and legal representatives of deceased defendant No.1 on the record of the present suit within the prescribed time and accordingly, the heirs of the original plaintiff have filed an application for condonation of delay at Exh.34 and said application has been granted by this court today by condoning the delay and setting aside the abatement qua the defendant No.1.

5. It appears that the heirs and legal representatives of deceased defendant No.1 are also proper, necessary and interested parties to the present suit as the result of the present suit would be affected the rights of all the heirs of the deceased defendant No. 1. It is further submitted that if they are not being joined as parties in the present suit, it would prejudice the rights of the heirs of the deceased defendant No.1 and if the present application be allowed, there would not be any adverse affect to any of the parties and as such by joining the heirs of the deceased defendant No.1, the nature of the suit will not be changed.

6. 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. 37 is hereby ALLOWED.

The plaintiffs are permitted to join the heirs and legal representatives of deceased defendant No.1 – Banubibi Rasul Murad, on the record of the present suit, as mentioned in para 1 of the the present application, as prayed for.

Amendment be carried out accordingly within stipulated time. No order as to costs.

Put up on 27th February, 2024.

Pronounced in the open Court on this 3rd day of February, 2024.

Date: 3rd February, 2024. (Rajendra Ghanshyambhai Barot)
Principal Senior Civil Judge
Mangrol, District : Surat
Judge Code : GJ00572