
REGULAR CIVIL SUIT NO. 141 OF 2018

Order below application Exh.51 :-

1. In view of the order, condoning the delay in preferring the present application by setting aside the abatement qua the defendant Nos. 1, 2 and 6, passed below application at Exh.50, 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 – (1) deceased defendant no.2 – Banubibi Aaiyub Malek, (2) deceased defendant no.1 – Usmangani Rasul Malek and (3) deceased defendant no.6 – Rabiyyabibi Bashir Malek, on the record of the present suit.

3. Read this application, plaint and other related papers on record. Heard Mr. Y.A. Lunat, learned advocate appearing for the plaintiff and Mr. M.S.Kanungo, learned advocate appearing for the proposed heirs of the deceased defendant no.2 and Mr. I.M. Sardar, learned advocate appearing for the defendant nos. 3 & 5 and Mr. A.P. Shah, learned advocate appearing for the proposed heirs of the deceased defendant no.6. None appeared on behalf of the rest of the defendants.

4. 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. It is submitted that during the pendency of the present suit, the defendant no.2 - Banubibi Aaiyub Malek expired on 24th August, 2019 at Surat whereas the defendant no.1 - Usmangani Rasul Malek also expired on 22nd December, 2014. It is also submitted that one of the sons of deceased defendant no.1 named Shabbir Usmangani Malek has also expired on 2nd May, 2018 and the defendant no.6 - Rabiya Bibi Bashir Malek expired on 19th June, 2019 at Village : Nani Naroli, Taluka : Mangrol, District : Surat.

5. It is submitted that during the pendency of the present suit, the defendant nos. 1, 2 and 6 expired and, therefore, the heirs and legal representatives of the deceased defendant Nos.1, 2 and 6 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, the plaintiff could not bring the heirs and legal representatives of deceased defendant Nos.1, 2 and 6 on the record of the present suit within the prescribed time and accordingly, the plaintiff has filed an application for condonation of delay at Exh.50 and said application has been granted by this court today by condoning the delay and setting aside the abatement qua the defendant Nos.1, 2 and 6.

6. So far as present application is concerned, it appears that the heirs and legal representatives of the deceased defendant Nos.1, 2 and 6 are proper, necessary and interested parties and the result of the present suit would be affected the rights of the heirs of the deceased defendant Nos.1, 2 and 6. It also appears 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 Nos.1, 2 and 6 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 Nos.1, 2 and 6, the nature of the suit will not be changed.

7. 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 :-

==: ORDER ==

This application Exh. 51 is hereby ALLOWED.

The plaintiff is permitted to join the heirs and legal representatives of – (1) deceased defendant no.2 – Banubibi Aaiyub Malek, (2) deceased defendant no.1 – Usmangani Rasul Malek and (3) deceased defendant no.6 - Rabiyyabibi Bashir Malek, 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 25th October, 2023.

Pronounced in the open Court on this 11th day of October, 2023.

Date: 11th October, 2023.

(Rajendra Ghanshyambhai Barot)
Principal Senior Civil Judge
Mangrol, District : Surat
Judge Code : GJ00572