

ORDER BELOW EXHIBIT 35.

(Delivered on this the 27th day of the month of August of the year 2021)

This order shall dispose of the application filed by the Plaintiff no.1 at exhibit 35 to bring legal heirs of Defendant nos. 1 and 2 on record.

2. Heard Ld. Advocate Mr. S. Ramnathkar for the Plaintiffs and Mr. D. V. Naik for the proposed legal heirs of the Defendant nos. 1(a) to (c), Adv. Ms. S. Verenkar holding for Adv. Shri V. Deulkar for the proposed legal heirs of the Defendant nos. 2(a) to (e) and Adv. Shri S. Pilgaonkar for Defendant nos. 4 and 5.

3. According to the Plaintiffs, Defendant no. 1 has expired and Defendant no. 2 has expired on 18.10.2017. The said Defendant no. 1 is survived by his brother, Shri Anand Damodar Chari, his brother's son namely Shri Ghanashyam Anand Chari and Smt. Shubadha Ghanashyam Chari (wife of Ghanashyam). The Defendant no. 2 is survived by his son Shri Santosh Tatoba Chari, daughter in law Smt. Bharti Santosh Chari, two brothers Shri Anil Tatoba Chari and Shri Jagannath Tatoba Chari and sister in law Smt. Babita Anil Chari (wife of Anil Chari). It is submitted that the said legal heirs are the only legal heirs of Defendant nos. 1 and 2 and they are required to be brought on record.

4. The Plaintiff further submitted that there was a delay in bringing the legal heirs of the deceased Defendants on record as Plaintiffs could not trace as to who were the legal heirs of the deceased Defendant no. 1 and Defendant no. 2. So also, the Plaintiffs were unaware as to when and where the Defendant no. 2 expired. The Plaintiff had filed the present application no sooner he could trace the death certificate of the said Defendant no. 2.

5. The Plaintiff has further submitted that the application for condonation of delay is already granted and therefore prayed that the legal heirs of late Defendant no.1 be added as Defendant Nos. 1(a) to (c) and legal heirs of late Defendant no.2 be added as Defendant Nos. 2(a) to (e) in the present matter.

6. Defendant nos. 1(a) to 1(c) has filed their reply at Exhibit D/42 and has objected to the said application. It is submitted that the Plaintiffs have failed to disclose the date of knowledge of the death of the Defendant no. 1 and source of the details of the legal heirs of the Defendant nos. 1 and 2. The Plaintiffs were very well aware in advance about the death of both the Defendants and willfully and deliberately did not take proper steps to bring all the legal heirs of the Defendant nos. 1 and 2 on record. The application filed by the Plaintiff is not maintainable. Hence, prayed that application be rejected.

7. Defendant nos. 2(a) to 2(e) has filed their reply at Exhibit D/41 and has objected to the said application. It is submitted that the application filed by the Plaintiffs is bad in law and is not maintainable. The Plaintiffs were very well aware in advance about the death of both the Defendants and willfully and deliberately did not take proper steps to bring all the legal heirs of the Defendants on record. Hence, prayed that application be rejected.

8. Defendant nos. 4 and 5 submitted that reply for condonation of delay for bringing LR's of Defendant no. 1 and 2 on record be treated as reply to present application(Exhibit 36). They have stated that the Plaintiffs till date has not produced death certificate nor has filed confirming the death of the Defendant no. 1. Hence, prayed that the application be dismissed.

9. Upon going through the record, I find that as per the death certificate, Defendant no.2 has expired on 18.10.2017. The present application has been filed on 06.03.2018. I find that the application for condonation of delay for bringing legal heirs has already granted. Since advocate for the Defendants have nowhere placed any documents to show that Defendant no. 1 is living or that Plaintiff has deliberately not brought all the legal heirs of Defendant no. 2 on record. Opportunity needs to be given to the Plaintiffs to bring the legal heirs of said Defendant nos. 1 and 2 on record.

10. Hence, I pass the following:-

ORDER

1. The application at exhibit 35 is allowed.
2. Legal representatives of Defendant no. 1 and Defendant no. 2 mentioned in the application shall be brought on record.
3. Amendment to cause title shall be carried out forthwith.
4. Thereupon, issue notice to the legal heirs brought on record.

Pronounced in the open Court.

(Manashree M. Naik)
Civil Judge, Junior Division,
'C' Court, Ponda.

Nv.