

MHAH13000
6172016



**COMMON ORDER BELOW EXHS.11 & 13 IN RCA
No.42/2016.**

(Somnath Mohan Navale Vs. Jalindar Mohan Navale & ors.)

1. By way of abovesaid appeal under section 96 and Order XLI of the Civil Procedure Code, the appellant/original plaintiff has taken exception to the Judgment and Decree dtd.14.10.2013 passed by Learned Jt. Civil Judge, Junior Division, Newasa in Regular Civil Suit No.331/2009 whereby the Learned Trial Court has partly allowed the suit for partition, separate possession and permanent injunction by holding that the plaintiff and defendants each have one-fifth undivided share in the suit lands 1-A to 1-C.
2. By way of application Exh.11, the appellant/original plaintiff has prayed for condonation of delay in bringing legal heirs of the deceased respondent No.1 whereas by way of application Exh.13 he has sought permission for taking proposed legal heirs No.1-A to 1-D of deceased respondent No.1 who expired on 27.09.2021 on record.
3. Perused the applications Exh.11 & 13, say filed by proposed respondents No.1-A to 1-D, the legal heirs of deceased respondent No.1 and relevant records.
4. Heard Learned Counsel Shri. N.S. Joshi for the appellant/plaintiff and Learned Counsel Shri. D.B. Deshmukh for proposed respondents No.1-A to 1-D.

5. As there is delay in bringing said proposed legal heirs of deceased respondent No1. on record, the applicant has filed an application Exh.11 for condonation of said delay. Said application for condonation of delay has vehemently opposed by the proposed LRs and other respondents on the ground that the deceased respondent No.1 Jalindar Mohan Navale is the real brother of appellant, and therefore, the appellant was very well aware about his demise. Therefore, the delay is not only deliberated but also intentional. Moreover, no prayer of setting aside of abatement has made.

5. The contentions of the respondents and proposed legal heirs of the deceased respondent No.1 about relations between parties appear to be correct. However, it is necessary to consider that the present appeal is a first appeal and it is always preferable to decide the matter on merits rather than taking away the right of party by rejecting the application for bringing legal heirs on record.

6. No doubt, there is no prayer for setting aside abatement. However, as there is a separate application for condonation of delay has preferred vide Exh.11, it is required to be treated that there is deem prayer for setting aside the abatement.

6. No doubt, the delay has not properly explained accept by mentioning that the appellant is illiterate person and was not aware about the provisions of law. However, it is necessary to bring the legal heirs on record so that the matter can decide finally on merits by giving

opportunity of hearing to the parties to agitate their case on merits. No doubt, by condoning the delay some inconvenience would be caused to proposed respondents No.1-A to 1-D, the same can be somewhat compensated by awarding cost of Rs.1,000/- payable to them equally. Hence, I pass the following order :

ORDER

1. Application Exhs.11 & 13 in Regular Civil Appeal No.42/2016 is hereby allowed.
2. The abatement of deceased respondent No.1 is hereby set aside.
3. The delay caused in bringing legal heirs of deceased respondent No.1 on record is condoned on condition that the appellant shall pay/deposit a cost of Rs.1,000/- (Rupees One Thousand only) equally payable to the proposed respondents No.1-A to 1-D on or before next date.
4. After payment of such cost, the amendment in the form of taking the legal heirs of deceased respondent No.1, i.e., respondent No.1-A to 1-D on record as sought by the appellant in the application Exh.13 be carried out in the appeal memo (Exh.1) and all ancillary applications/proceedings and the appellants shall submit amended copy of the same on record, without fail.
5. Applications Exh.11 & 13 stands disposed off accordingly.

(Dictated and Pronounced in open court.)

Date : 10.10.2024
Newasa

(Vinod Y. Jadhav)
District Judge-1, Newasa
JO Code : MH002455