

MHAH180011102013



Order passed below Exh. 102 in R.C.S No. 375/2013

(Thakubi Pandurang Pilgar and others Vs. Rambhau Tukaram Kanade and others)

- 1] The plaintiff No. 1 has moved present application for setting aside abatement order.
- 2] Perused the application and say filed by defendants.
- 3] Heard learned advocate for the plaintiff No. 1 and learned advocate for defendants.
- 4] The plaintiffs have filed present suit for declaration and for separate possession. During pendency of the suit, the plaintiff No. 2 namely Housabai Rakhama Ghandat has died on 30/03/2018. Thereafter, it is necessary to bring her legal heirs on record. Therefore, the suit was abated against the plaintiff No. 2. The plaintiff No. 1 through this application has prayed to set aside the said abatement order.
- 5] The defendants have objected the application by filing say at Exh. 111. It is contended that, the plaintiff No. 1 is not having any right to file this application. This application cannot be moved at this stage as the matter is pending for the final argument. The plaintiff

No. 2 has died on 30/03/2018. However, the legal representatives of the plaintiff No. 2 did not file the application within the prescribed period of the limitation. Therefore, the suit against the plaintiff No. 2 is abated. The plaintiff No. 1 was having idea of the death of the plaintiff No. 2 as she was the sister of plaintiff No. 2. However, she has deliberately did not file the said application. The present application is filed after six and half years after the death of the plaintiff No. 2. Therefore, the application is not within the prescribed period of the limitation. The said application is not maintainable. Therefore, it is prayed to reject the application.

6] It is to be noted that as per Order XXII Rule 3 sub rule (2) of the Code of Civil procedure, where within the time limited by law no application is made for bringing legal heirs of the deceased on record, the suit shall abate as against the deceased plaintiff No. 2. If the appropriate steps are not taken for substitution and bringing the legal representatives of the deceased party in time when the right to sue survives, abatement of suit takes place automatically.

7] As per Article 120 of the Limitation Act 1963, limitation for bringing legal heirs and representatives of the deceased party is 90 days. In the case in hand, there is admittedly delay in filing the application for bringing legal heirs of the deceased plaintiff No. 2 on record.

8] It is to be noted that, the plaintiff No. 1 had filed the application for bringing legal heirs of deceased plaintiff No. 2 on

23.08.2024. Admittedly, the plaintiff No. 2 died on 30.03.2018. Considering the nature of suit, the right to sue survives.

9] It is to be noted that, the contentions put forth by the plaintiff No. 1 is supported with affidavit. The court has to exercise its discretion in the interest of justice by keeping in mind the right survives in the legal heirs of deceased plaintiff No. 2 and the prayer of setting aside an abatement has to be considered liberally. If the abatement is set aside, the merits of case can be determined and if the abatement is not set aside then the party would be deprived in proving their claim.

10] Considering the nature of the suit, in order to settle actual controversy between both parties completely, it will be just and proper to allow application subject to costs of Rs. 1,000/- payable to the defendants for compensating them for delay. In view of the above discussion and in the interest of justice, I pass the following order.

ORDER

1	The application is allowed.
2	Abatement in respect of deceased plaintiff No. 2 namely Housabai Rakhama Ghandat is hereby set aside, subject to costs of Rs. 1,000/- (Rs. One Thousand Only) payable to the defendants.

Date: 08.10.2024

(Sou. R.S. Tapadiya),
Jt. Civil Judge Junior Division
Rahuri.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original judgment.

- (a) Name of the Stenographer : Sou. J. N. Gali (Steno L.G)
- (b) Court : Jt. CJJD & JMFC, Rahuri
- (c) Date of Judgment/Order : 08/10/2024
- (d) Judgment/Order signed by : 08/10/2024
P.O on
- (e) Judgment/Order uploaded : 08/10/2024
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