

Common order below Exh.36,38 and 40 in RCS NO.252 of 2015

(Bhimabai Harichandra Vs. Harichandra Raghunath)

The applicant/plaintiff moved these applications and prayed to condone delay, set aside abatement order and to take legal heirs of deceased Defendant No.5 Sangita Badrinath Mashke on record. The applicant/plaintiff also prayed to make amendment accordingly. According to the applicant/plaintiff, Defendant No.5 died on 30/07/2015. The legal heirs of Defendant No.5 is necessary to come on record. Hence, applicant/plaintiff prayed to allow the applications.

2. Sufficient opportunity was given to the defendants to file say but defendant failed to file say hence, application at Exh. 36, 38 and 40 proceeded without say of the defendants.

3. Heard learned advocate for applicant/plaintiff. Perused the application. The plaintiff instituted suit for Partition and declaration. Copy of death certificate of deceased Defendant No.5 is produced on record. It shows that the Defendant No.5 died on 30/07/2015 at Akathwade, Tal. Shevgaon, Dist. Ahmednagar. The applicant/plaintiff want to take legal heir of deceased defendant No.5 on record. Applicant/Plaintiff failed to approach before the court within limitation. The abatement is automatic after expiry of 90 days from the date of death. Therefore, the suit is automatically abated. Due to unavailability of information and lack of knowledge about law, delay was costs. The reason is quite justifiable and satisfactory. Defendants failed to file say. For proper adjudication of the suit and for fair trial all legal heirs of the deceased are necessary to come on record . The Defendant No.5 died on 30/07/2015 and instant applications (Exh.36, 38 and 40) are filed on 18/12/2019. No doubt, the applicant/plaintiff has made a long delay to file instant applications. Considering the above discussion in the interest of justice, the applications at Exh. 36,38 and 40 needs to be allowed but obviously on

cost. Hence, I pass the following order.

ORDER

1. The application Exh. 36, 38 and 40 are allowed subject to cost of Rs. 300/-.
2. Delay is condoned to take legal heirs of deceased Defendant No.5 on record.
3. The plaintiff is allowed to bring on record legal heirs of deceased Defendant No.5 within statutory period.

Date: 03/11/2022

Sd/-
(S. U. Jaguste)
C.J.J.D., Shevgaon