

RCS No. 16/2012.

Deepakkumar .Vrs. Rajkumar.

Order Below Exh.122 and 123.

(Passed on 21/07/2016.)

01] The plaintiff has filed application Exh.122 for setting aside abatement and condonation of delay in bringing the legal heirs of deceased defendant no.4 on record and the application Exh.123 for bringing the legal heirs of deceased defendant no.4 Sau. Anita Bharat Sharma.

02] Called the say of defendants. The defendants have given their say overleaf of the said applications.

03] Heard the Learned Counsels for the plaintiff and defendants.

04] Perused both the applications and say. Considered the submissions of both side. It is the contention of plaintiff that the defendant no.4 Sau. Anita Bharat Sharma died and he got information on 03/03/2015 by the defendant no.1. The defendant no.4 was the real sister of plaintiff. Even though, the plaintiff have no contact with her. It is the further contention of plaintiff that the deceased defendant no.4 was residing at Akot, when present suit was filed. Thenafter, subsequently, he got knowledge that she shifted at Panwel. The deceased defendant no.4 has no child. Her husband is only legal heir. The plaintiff got address of defendant recently. Hence, the legal heir of deceased defendant no.4 is only Bharat Badriprasad Sharma. It is the further contention of plaintiff that there is no any deliberate delay. Hence, prayed to consider the above facts and circumstances and may be kindly grant these applications. On the other hand, the learned Counsel for the defendants contended that the delay is not explained properly, hence, the applications may be grant with

cost.

05] On the perusal of record and applications, it is clear that the defendant no.4 Anita Bharat Sharma died on 03/03/2015. The plaintiff has failed to bring the legal heirs of deceased defendant no.4 on record within a period of limitation of 90 days. This suit stands abated against the defendant no.4. No doubt, the abatement order did not pass on record. It is pertinent to note here that the suit is abated automatically, if the legal heirs of deceased has not bring on record within 90 days. The suit is for partition and possession. The the deceased defendant no.4 is the real sister of plaintiff. Other family members of plaintiff are on record. As per the contention of plaintiff and defendant, the deceased defendant no.4 has no child. Bharat Badriprasad Sharma is her husband and he is only legal heir of deceased defendant no.4. As per the above submissions and contentions, it is clear that there is right to sue survive. As above stated the application to bring the legal representatives of deceased defendant no.4 on record of the suit is made within a limitation period of 90 days as prescribed by Article 120 of the Limitation Act, from the date of death of deceased defendant no.4. The reason for delay stated by plaintiff is satisfactory. The delay can be considered by imposing cost on the plaintiff. The legal heirs of deceased defendant no.4 is necessary for the determination of real question. Hence, I pass the following order.

Order

01. The application Exh.122 and 123 are allowed at the cost of Rs.500/- and be paid to the defendants.
02. The plaintiff is allowed to bring legal heirs of deceased defendant no.4 on record of the suit within 14 days from the date of this order.
03. It is directed to the plaintiff to file amended plaint and supply the copies to the defendant. Sd/-

(B.M. Kale)

Civil Judge (J.D.), Balapur.

Certificate

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of Steno	:	S.V. Indane.
Court Name	:	C.J.J.D. & J.M.F.C., Balapur.
Date	:	21/07/2016.
Signed by Presiding Officer on	:	21/07/2016.
Uploaded on	:	21/07/2016.
