

MHAU090013902009



R.C.S.186/2009
Kadubai Gunjal
Vs.
Sainath Gaikawad & ors.

Common Order below Exh.38
(Passed on 03/04/2023)

This is an application for setting aside abatement as well as condonation of delay and for bringing legal heirs of plaintiff on record.

2. Perused the application. It is submitted that, the plaintiff has died on 18/04/2020 leaving behind one son and two daughters as her legal heirs. The sudden death of the plaintiff was shock to her heirs. Their legal heirs were required to be brought on record within 90 days. However, the applicants were in grief over the death of plaintiff. Moreover, they were not having knowledge about the suit filed by plaintiff. Moreover, due to covid pandemic functioning of the Courts was restricted. Moreover, the applicants had no knowledge about the legal provisions. Therefore, there is delay of 818 days for bringing the Lrs on record. Hence, it is submitted that, delay may be condoned and the said abatement be set aside and permission may kindly be given to bring the Lrs of plaintiff on record.

3. The defendant 1 and 2 have filed their say below application and opposed the application on the ground that, no explanation is given for delay caused. Therefore, the application filed by the applicant is illegal. Therefore, they have prayed to reject the application. Heard the learned advocate for both the parties.

4. It is not disputed by the parties that, the plaintiff has died on the said date. Only question is that, legal heirs of the plaintiff are not brought on record within time. There is delay of 818 days to bring the Lrs on record. Suit is for partition, separate possession and perpetual injunction. The applicants being legal heirs of the plaintiff have got share in the suit property. In order to adjudicate suit on merits it is just and proper to set aside the abatement and to condone the delay. The cause of action survives and therefore it appears that the proposed legal heirs of the said deceased plaintiff are required to be brought on record. However, the delay of 818 days caused due to action of the plaintiff cannot be ignored. Therefore, the application is required to be allowed by imposing costs. Hence, I pass the following order.

ORDER

- 1] Application is allowed subject to costs of Rs.500/- (Five Hundred Only) payable to the defendants on or before next date.
- 2] The said abatement is set aside after payment of costs.

- 3] The proposed legal heirs of the plaintiff be added in the suit as plaintiff no.1A to 1C.
- 4] The proposed legal heirs shall file the amended plaint within time.

Date: 03/04/2023

(S.R.Kanakdande)
03rd Jt.CJJD & JMFC.,
Paithan.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of Stenographer : Sarika S. Gondre
Court : Civil Judge Junior Division,
(Court No.03 Paithan)
Date of order : 03/04/2023
Order signed by the Presiding Officer on : 03/04/2023
Order uploaded on : 03/04/2023