

CNR.MHBI110003832004

COMMON ORDER BELOW APPLICATIONS EXH. 185 & 186

IN RCS NO. 167/2004

(Kaushalyabai Vs. Sakharam)

1. Application at Exh. 185 is filed by the Sunita Baban Idge and Surendra Baban Idge as per section 5 of the Limitation Act for condonation of delay to file application for setting aside abatement. Application at Exh. 186 is filed by them as per Order 22 Rule 3 of C.P.C. for grant of permission to bring the legal representative of deceased plaintiff No. 2 (i) on record. They contended that, plaintiff No. 2 (i) died on 27.04.2021 and they are the legal heirs of deceased Baban Baburao Idge. But due to Covid situation and being they were not having knowledge about this suit they could not appear in the proceeding. This suit being related to the immovable property their interest is involved in it. Hence, they prayed to condone the delay caused for filing application to set aside abatement and also prayed to add them as plaintiff in the suit.

2. By filing say at Exh. 194, 195 defendant No. 1 opposed the application contending that, though the applicants are not yet added as plaintiffs but they mentioned in the application as plaintiffs. They have not mentioned in the application that there is no other legal heir to the deceased Baban Idge. Till the year 2020 Corona period was over and judicial work was started in the year 2021. Therefore, the reason mentioned in the application is false. The applicants are not entitled to file this application without consent of other plaintiffs. Therefore, he sought for rejection of this application.

3. Heard learned counsels for both the sides. Perused the record. This suit is filed for partition and separate possession. Plaintiff No. 2 (i) Baban Baurao Idge appears to have died on 27.04.2021. Copy of his death certificate is filed on record at Exh. 184. As per Order 22 Rule 1 of C.P.C. the death of plaintiff or defendant shall not cause the suit to abate if the right to sue survives. As per Order 22 Rule 2 of C.P.C. where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants. Thus, it appears that mere death of a party to the suit does not abate the suit if the right to sue survives. In this case, there are other co-plaintiffs also and suit is for partition and separate possession. Therefore, from the nature of suit it appears that death of plaintiff No. 2 (i) has not abated this suit. After his death only requirement was that to take entry to that effect as per Order 22 Rule 2 of C.P.C. Therefore, In my view there was no requirement to file the application to set aside abatement.

4. As to the grant of permission to add the applicants in this suit as a heir of deceased plaintiff No. 2 (i) Baban Baburao Idge this suit being for partition the applicants appears to be necessary parties to this suit who are the legal representative of the deceased Baban Baburao Idge. Therefore, I do not found any hurdle to allow the

application at Exh. 186. Hence, in the interest of justice I proceed to pass following order.

ORDER

01. Application at Exh. 185 is hereby filed as was not required.
02. Application at Exh. 186 is hereby allowed and the applicants are permitted to add them in this suit as plaintiff No. 2 (i-i) and 2 (i-ii) as prayed.
03. Cost in cause.

Date : 09/10/ 2024

**(S. P.Wankhade)
Civil Judge, Junior Division,
Georai**

I affirm that the contents of this PDF file are word to word as per original order.

Dictated on : 09/10/2024

Transcribed on : 09/10/2024

Checked & signed on : 09/10/2024

Sd/-
(V. V. Mandve)
Stenographer
Civil Court J. D. Georai.