

MHBU040004262016



Order below Exh.12
(Passed on 13/8/2024)

This is an application filed by the appellant/original plaintiff, on 3.10.2022, to permit him to bring on record the legal heirs of deceased respondent No.1 Sheshrao Manku Tayade by condoning the delay caused in making the application and even by setting aside abatement of appeal if any for the reasons mentioned in the application.

2. Notices was issued to the proposed legal representatives of deceased respondent No.1. As per bailiff report the proposed respondent No.1-C to 1-F being legal heirs of deceased were served vide Exh.14 to 17. Proposed respondent No.1-A and 1-B being daughter of deceased respondent No.1 are residing at Nagalatad, Tq. Bharthana, Dist.Itawa (Uttar Pradesh). Therefore, notice was issued to them twice by registered post AD. But acknowledgment did not receive. Hence, appellant has filed application Exh.20 along with his affidavit Exh.21 stating service of notice may be presumed.

3. Heard Mr.S.V.Agrawal advocate for the appellant.

4. As in spite of notice of service, the proposed respondent No.1-A to 1-E did not appear to contest the application. Considering the nature of matter, the right of sou is survived. According to appellant the deceased respondent No.1 was residing at the place of his two daughters in Uttar Pradesh therefore, he could not get the information about the death of respondent No.1 within stipulated period. When he came to know about the death of respondent No.1 from his sister Anusaya Wankhade, he immediately got the names of legal heirs of deceased and filed application. There is six days delay in making the application. According to appellant, the interest of respondent Sheshrao in the suit property is protected by his brother respondent No.2 Bhagwan Tayade and as such there cannot be any abatement of appeal.

5. As respondent No.1 died on 28.6.2022 in Uttar Pradesh. According to appellant, he had no knowledge about the death of respondent No.1 Sheshrao because he was residing with his daughters at Uttar Pradesh. The reason mentioned in the application are seems to be just and proper. Moreover, application is supported with the affidavit of appellant. There is only six days delay in making the application as per submission of appellant. Therefore, it is necessary to bring on record the legal heirs of deceased respondent No.1. Therefore, application deserves to be allowed. In result, I pass the following order :-

ORDER

- 1] Application Exh.12 is hereby allowed as per prayer.
- 2] Appellant to carry out amendment in the appeal memo accordingly within 14 days and to submit the copy of amended appeal memo accordingly.

Dt.13/8/2024

(G.B.Jadhav)
District Judge-1, Khamgaon.

Certificate

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

Name of Steno : Mrs.Nishat Anjum Mohd.Rafique.

Name of Court : District Judge-1, Khamgaon, Dist.Buldhana.