



RCS 14/2016
Shri. Gajanan Maharaj Sansthan Shegaon
Vrs. Amar
Order Below Ex. 77.
(Passed on 17.09.2021)

1. Present application is moved by defendant for abatement of suit. In the application, the defendant has submitted that the plaintiff No.1 Shri. Shivshankar Sukhdev Patil has expired but rest of the plaintiffs have not any step to delete his name from the suit. It is further claimed that till date the surviving plaintiffs have not disclosed whether any other member has been nominated as managing trustee of the trust or not. As per defendant, since the plaintiff No.1 has died and the suit instituted by 12 plaintiffs jointly, the cause of action can not be separated. With such submission and for the omissions of the plaintiffs to take necessary steps in the suit, the defendant has prayed to abate the suit.

2. The plaintiffs have filed their Say vide Exh. 78 and contested the application. In the Say, the plaintiffs have submitted that the plaintiff No.1 shown in the Plaint is Gajanan Maharaj Sanstan and not late Shivshank Sukhdev Patil. It is further submitted that the plaintiff No. 7 Nilkant Patil has been appointed as managing trustee and Change Report regarding it is pending for acceptance before Ld. ACC, Buldana. The plaintiffs have further pointed out that when the right to sue survives, the suit can not be abated because of death of the party to the suit. It is also submitted that even though the managing trustee has died, rest of the trustees, who are included in the suit in the array of plaintiffs can proceed with the suit. Apart from this, the plaintiffs

have also pointed that previously, after death of original plaintiff No. 6, similar application moved by the defendant and that application was rejected by this Court on merit. As per plaintiffs, that order was not challenged by the defendant and therefore, this application is also not maintainable. With such submission, it was prayed to rejected the application.

3. Heard both sides.

4. Perused the record. Record shows that this suit has been instituted by Shri Gajanan Maharaj Sansthan through its managing trustee Shri. Shivshank Patil. Further, the trustees of the plaintiff No.1 is also included in the suit as plaintiff No. 2 to 5 and 7 to 12. Now, in the application, the defendant has claimed that the plaintiff No.1 has expired and no steps have been taken to delete his name from the suit. On such claim the defendant is seeking abatement of the suit. However, the title clause of the Plaint itself shows that the defendant has erred in describing late Shivshank Patil as plaintiff No.1 in the application. As stated above, the plaintiff No.1 is aforesaid Sansthan and not late Shivshank Patil. Therefore, though the defendant is claiming that as the plaintiff No.1 has died and as his name is not yet deleted, the suit should be abated, such claim seems to be without merit.

5. Further, Order 22 Rule 1 of CPC provides that when a plaintiff or defendant dies, the suit can not be abated if the right to sue survives. Further, Order 22 Rule 2 provides that where there are more plaintiffs or defendants than one and any of them dies and the right to sue survives either in the favour of remaining plaintiff or plaintiffs or against the remaining defendant, the Court can made such entry regarding dead of the party and it will

proceed with the disposal of case before it. Here also, the managing trustee of the plaintiff trust has died while rest of the trustees are included in the suit in the capacity of plaintiffs. Further, right to sue against the defendant is still in existence and as provided under Rule 1 & 2 of Order 22 of CPC, Court can proceed with the suit. Further, as mentioned in the Say (Exh.77) the plaintiffs have appointed a new managing trustee and Change Report is pending before Ld. ACC, Buldana for its acceptance. Unless, such Change Report is accepted, we can not expect from the plaintiff to mention the name of managing trustee in the title clause of the Plaint. At the most Court can direct the plaintiffs to remove/delete name of deceased managing trustee from the title clause and proceed with the suit as we have the Sansthan as plaintiff No.1 and the existing trustee are also included in the suit as plaintiffs.

6. Hence, considering above observation, it can be say that the application is devoid of merit and it deserves to be rejected. The suit can be abated for the reasons cited in the application and therefore, I am passing following order:-

Order

1. The application (Exh77) is rejected.
2. The plaintiffs are directed to delete the name of deceased managing trustee within three weeks from today.

Place : Shegaon.
Date : 17.09.2021.

-Sd-
[J.R. Ghadge]
Civil Judge Junior Division
Shegaon, Dist. Buldana.

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CNR.No.MHBU007-000664-2016

I, *Rupesh Ashok Dandge*, Stenographer of C.J.J.D. & J.M.F.C. Court No.1, Shegaon affirm that the contents of this P.D.F. file order is correct word to word as per the Original Order.