

MHKO050019182009



COMMON ORDER BELOW EXHIBIT
NOS.185 and 186 IN
REGULAR CIVIL SUIT NO.18/2010
(Passed on 16. 03. 2023)

1. Perused the applications and reply of legal representatives of deceased defendant no.8 Vishwas. Heard learned counsel for both sides.

2. It is the case of the plaintiff that he had no knowledge of death of defendant no. 7 and 8 and as soon as he acquired knowledge, they took out application for bringing legal representatives on record. This aspect as regards knowledge is not seriously disputed by the proposed defendant no.8A to 8D. Plaintiff has filed the suit for partition and separate possession. Therefore, it is clear that, right to sue survives against legal representatives of deceased defendant no.8. It is true that there is huge delay in bringing her on record. However, it is now well settled that the provisions of Order 22, Rule 1, Civil Procedure Code are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspect of law. Therefore, it is to be noted that said delay cannot be a sole ground to reject the application when other side can be compensated for such delay. Hence, with a view, to grant an opportunity to the plaintiff to contest the matter on merit it will be just and reasonable to condone the delay for bringing the LR's of deceased defendant no.8 on record and to set aside the abatement.

3. It is submitted that defendant no.7 is also died on dated 02/05/2020 and he is survived by legal representatives of deceased defendant no.8. Accordingly, it is prayed to delete the name of deceased defendant no.7.

4. In view of aforesaid facts and circumstances of the case, I proceed to pass following order:

ORDER

1 Application Exh. 185 and 186 are allowed subject to cost of Rs.1,000/- (Rupees One Thousand only) payable to legal representatives of deceased defendant no.8.

2 Delay in bringing LR's of deceased defendant no.8 on record is hereby condoned.

3. Notional abatement of the suit is hereby set aside.

4. LR's of deceased defendant no.8 be brought on record till next date, without any fail.

5. Plaintiff shall supply amended copy of plaint on the next date without any fail.

6. LR's of deceased defendant no.8 shall file their written statement within 30 days after carrying out of necessary amendment in plaint by the plaintiff in accordance with the present order.

7. Suit stands disposed of so far as deceased defendant no.7 is concerned. Accordingly, name of defendant no.7 Bhagirathi Karde be deleted from the title clause of the plaint.

Ichalkaranji.

Date :- 16. 03. 2023

(H. A. Wani)

Civil Judge, Sr.Dn., Ichalkaranji