

MHKO090001382011



ORDER BELOW EXH. 87 IN REG. CIVIL SUIT NO. 64/2011

1. Perused the application Exh. 87 and say. Heard both the Ld. Advocates. The application is filed for dismissal of the suit, stating that it has become infructuous. The plaintiff strongly opposes the application. It is submitted by the plaintiff that the suit has not become infructuous. Defendant Nos. 3 and 4 have deliberately filed this false application to prolong the hearing.
2. Now it is to be seen, whether the present suit at this stage can be dismissed, holding that it has become infructuous. In March 2021, the suit was pending for evidence. In September 2021, the application was moved for bringing legal representatives on record. For certain period, it was pending for that stage and to pass an order on the application for legal representation. All of a sudden, defendant Nos. 3 and 4 filed this application praying that the suit shall be dismissed. When any suit is pending for hearing, it can be dismissed only under Order 9 or under Order 17 of the Code of Civil Procedure i.e. for want of prosecution by the plaintiff. The Code of Civil Procedure does not provide any other provision by which the suit is to be dismissed. Similarly, the suit can be abated under Order 22 of the Code of Civil Procedure, after commencement of trial.
3. Usually in the civil suit, trial commences after framing of

issues. The parties adduce evidence in the light of issues framed by the court. Thus, after framing of issues, the suit is fixed for recording of evidence. When the suit reaches to the stage of recording of evidence, the dismissal order is to be passed as per Order 9 or under Order 17 of the Code of Civil Procedure. It is not the case of defendant Nos. 2, 3 and 4 that the suit is liable to be dismissed for want of prosecution. They do not contend that the plaintiff remained absent without justifiable reason. Hence, at this stage, when evidence is being recorded, the suit cannot be dismissed, holding that it has become infructuous.

4. Similarly, the suit is not abated. The plaintiff has already filed an application for setting aside abatement. The separate application is filed to bring legal heirs of plaintiff No. 17 on record. These applications are pending for passing order. Hence, without deciding these applications, the Court cannot say that the suit is liable to be disposed of as abated. Naturally, it cannot be disposed of under Order 22 of the Code of Civil Procedure.
5. The stage of Order IX Rule 5 and Order VII Rule 11 of the Code of Civil Procedure is already over. Hence, now at this stage, the suit cannot be dismissed or disposed of abruptly without deciding the issues on merit. Hence, I pass the following order-

ORDER

The application Exh. 87 is rejected.

Date – 23.03.2022

(G. V. Deshpande)

Civil Judge Senior Division, Gadhinglaj