

MHKO130002112003



COMMON ORDER BELOW EXH.91 and 92 IN R.C.S. NO. 128/2003.

(Sou. Navasabai Tade Vs Shri. Khandu More)

These applications are filed for setting aside abatement, for condonation of delay and bringing the LR's of plaintiff No. 1.

02. It is submitted by applicant that plaintiff No. 1 died on 22/03/2015. There is a delay of 42 days in bringing the LR's of plaintiff No. 1 on record. The applicant is illiterate and so, he is unaware about legal procedure. Meanwhile, Belgaon Municipal Corporation started the work of demolishing their houses. So, he was busy in their resistance. Therefore, he failed to contact with their lawyer within time. He further submitted that deceased plaintiff No. 1 executed Will dtd. 01/09/2007 in his favour. Therefore, he is legal representative of deceased. Hence, he prayed for setting aside abatement by condoning delay and also prayed for bringing the LR's of deceased plaintiff No. 1.

03. The defendant No. 3 has filed his say below Exh.99 and objected the applications filed at Exh.91 and 92. He has objected on the ground that the applicant is son of plaintiff No.2 and therefore, he has knowledge about present suit since beginning. The reasons mentioned in the applications are false and bogus. The applicant has no right to bring himself as representative of deceased on record. Plaintiff No.1 has no right to execute the Will deed and therefore, plaintiff No.1 has not executed any Will deed. On the instigation of plaintiff No.2, the said bogus and illegal Will deed is executed. The applicant has not

taken probate and declaration from the Competent Court. Therefore, the defendant No.3 prayed for rejection of the applications filed at Exh.91 and 92.

04. Defendant No.1 has filed his say below Exh.101 and 102 respectively and objected the applications filed at Exh.91 and 92. He objected on the ground that the reasons mentioned in the application is not sufficient and proper. The applicant has not come before the Court with clean hands. The Will deed filed by the applicant is bogus and same is executed by deceiving Nawasabai. The present applicant has never got any right and ownership as per said bogus deed. To prove the said Will deed, the burden is casted upon the present applicant. Defendant No.1 is legal heir of plaintiff No.1. To grab the share of defendant No.1, the said bogus Will deed is executed by the applicant in his favour. Ultimately, he prayed for rejection of the applications.

05. The plaintiff No.2 has not filed say to these applications. Hence, I proceed to decide these applications on merit without his say.

06. Perused the applications and say filed thereon. Heard learned Advocate for the plaintiff and defendant Nos. 1 and 3. I have also gone through the written notes of argument filed at Exh. 106. Studied section 2(11) and Order 22 of C.P.C. It is well settled that the provisions of Order 22, Rule 1 of 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. Further, Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merit of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid on justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained

in O. 22 of Civil Procedure Code as well as the subsequent amendment thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination into an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 of CPC are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. Therefore, at the time of deciding such type of applications, the court has to take liberal approach and also has to see ultimate justice in the suit. Admittedly, the applicant has not brought cogent reason to explain the delay of 42 days. However, this delay of 42 days is not huge delay. Therefore, it is necessary to set aside the abatement by condoning delay by imposing appropriate cost.

07. Further, learned Advocate for defendant No. 2 submitted that the applicant is not legal heir of deceased. The validity of Will is yet to be proved. Hence, he prayed for rejection of prayer of bringing LR's.

It is pertinent to note here that we have to bring legal representatives are on record and not the legal heirs. The legal representatives may be different from legal heirs. Here, it is necessary to go through the term legal representative which is defined in section 2(11) of C.P.C. i.e. as follows -

Legal representative means a person who in law represent the estate of deceased person and includes any person who inter-medal with the estate of deceased and where a party sues or is sued in a representative character, the person on whom the estate devolve on the death of party so suing or sued.

08. This application is moved on the basis of registered Will dtd.

01/09/2007, which is annexed with list Exh. 95. On perusal of said Will, it prima facie appears that deceased plaintiff No. 1 executed Will of his alleged share in the suit property in favour of present applicant. The said Will is registered Will. It appears from Will that alleged share of deceased plaintiff No. 1 will devolve in favour of present applicant. Whether there is share of deceased plaintiff No. 1 in suit property or not ? It needs to be considered after full fledged trial. There is conflicting interest of defendants with deceased plaintiff No. 1, so apparently they are not representative of deceased. Therefore, it seen from the Will that applicant represented the alleged share of deceased and so, it is necessary to permit him to bring himself as representative on record.

09. This is suit for declaration and injunction. Cause of action survives with legal representative of deceased. The present applicant represented deceased as well as his estate, therefore, it is necessary to permit him to bring himself on record as legal representative of deceased plaintiff No. 1. Hence, following order is passed.

ORDER

1. The delay is condoned subject to cost of Rs. 500/- (Rs Five Hundred Only). The amount of cost be paid to defendants.
2. The abatement is set aside.
3. The applicant is permitted to bring himself as legal representative of deceased plaintiff No. 1.
4. The plaintiff shall carry out necessary amendment within 14 days without fail.

Date: 14/08/2019.

(V. H. Khedkar)
Jt. C.J.J.D., Kagal.