

MHKO140000011981	Regular Civil Suit No.34/1981
	Ambaji Laxman Basargekar Vs. Babu Goopal Gawada

ORDER BELOW EXHIBIT- 368

(Passed on- 11/11/2024)

1. The present application is filed by the plaintiff's for condonation of delay in setting aside abatement and bringing legal representatives of deceased plaintiff no.1/6 on record.
2. It is submitted that during pendency of the present suit plaintiff no.1/6 Laxmi Sommantha Gavade died on 29/09/2023. Present suit is filed for partition and permanent injunction. The plaintiff are residing very odd place which is also very remote area. There was no contact between legal representatives of deceased and other plaintiffs. Other plaintiff are residing at the end of Chandgad taluka hence they could not obtain death certificate and correct of deceased plaintiff. Plaintiff could not inform their advocate about the death of plaintiff 1/6. So the suit is presumed to be abated. There is sacrificed not applying within limitation. The cause of action of the present suit does not abate but it survives. It is necessary to set aside the order of abatement and it necessary to condone the delay. Hence Present application.
3. Ld. advocate for defendant's filed say at ex. 374 and opposed there application. It is submitted that the contents of present application are false and baseless. The plaintiff 1/6 is daughter of deceased plaintiff no. 1. Her marriage was solemnized with

Sommanna Gawade resident of Patil Galli Turkewadi. The mother in law of plaintiff no. 1/A/A who is well educated person. Defendant no. 8 is also well educated. The plaintiff's residence of Turkewadi village which is only 18 KM away from the Chandgad. So it can not said that the plaintiff and Lrs of decased plaintiff 1/6 are not aware of the death of decased plaintiff. There is inordinate delay of 11 months in filing this application. There is no sufficient cause or reason. The provision of law is not mentioned. The proposed plaintiff legally can not seek two prayers in a single application. No separate application for condonation of delay is filed. Under such circumstances the application is liable to rejected.

4. Perused the record. Read the application and documents. Heard the learned advocate for the plaintiff. Other side filed to conduct argument inspite of sufficient opportunity.
5. The present application is supported by an affidavit. Plaintiffs have filed present suit for partition, separate possession and injunction. There is no dispute that the plaintiff no.1/6 died on 29/09/2023.
6. Perused the record. It is seen that, the plaintiffs have not taken steps for bringing legal representatives of deceased on record with limitation. It is seen that, there is near about 8 months delay in taking steps. However, though there is delay, but it would not be proper to reject the application on the said ground. Because the suit is for partition and separate possession. Moreover there is no bar in praying to two prayers in one application. The legal representatives of deceased plaintiff no. 1/6 have right to contest the suit and the right to sue survives. So, considering the relief claimed material

rights in respect of immovable property, are going to be decided in the present matter. Considering the nature of suit, I am of the view that the legal representatives of deceased plaintiff no.1/6 are necessary party to the suit and if they are added, then no prejudice or loss will be caused to the other side. Rather, it would help in deciding the matter conclusively. Moreover, in order to avoid the further, delay, multiplicity of litigation, it would be proper to allow the application. At the same time it is necessary and proper to impose cost for causing delay. Thus, I pass following order.

ORDER

1. The application is allowed subject to cost of Rs.800/-.
2. The delay caused in setting aside abatement, bringing legal representatives of deceased plaintiff no.1/6 is condoned.
Order of abatement is set aside.
3. The cost is payable to other side.

Date- 11/11/2024

Chandgad.

(Waman D Jadhav)

Jt. Civil Judge Junior Division,
Chandgad.