

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

ORDER BELOW EXHIBIT- 369

(Passed on- 11/11/2024)

1. The present application is filed by the plaintiff's for 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 Sommanna Gavade died on 29/09/2023. Present suit if file for partition and permanent injunction. The cause of action of the present suit does not abate but it survives. It is necessary to bring the legal representatives of deceased on record. The family of deceased plaintiff joint and **Nandkumar Sommanna Gawade** is the head of joint family. Hence the name of Nandkumar Gawade needs to be added and he be allowed to bring on record. Hence present application.
3. Ld. advocate for defendant's filed say at ex. 373, 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 deceased plaintiff 1/6 are

not aware of the death of deceased 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. The applicant is not the only the legal heir of deceased there are other legal heirs namely Sulochana Ishwar Basargekar, Parvati Shankar Patil and Three sons Subhash Sommanna Gawade, Nandkumar Sommanna Gawade and Satuppa Sommanna Gawade. It is false that Nandkumar is the head of the family of his sisters and brothers. They all are separate from each other with their respected family and residing separate house. Out of 3 sons of deceased plaintiff 1/6, Subhash is the elder son and Nandkumar is younger one. The proposed plaintiff no. 1/6/A suppressed the real facts from the court. He cannot claim himself or alone as Lrs deceased plaintiff. Under such circumstances the application is liable to be rejected.

4. Perused the record. Read the application and documents. Heard the learned advocate for the plaintiff. Other side filed to conduct argument in spite 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. The delay is condoned while order below ex 368. However 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. As per contents of defendant's is appear that proposed plaintiff is not only legal heir of deceased plaintiff. According to defendant's deceased plaintiff 1/6 has two married daughter and three sons. The present suit is for partition and it could be proper to hear the other legal representatives of deceased.

7. 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.
8. Thus, I pass following order.

ORDER

1. The application is allowed.
2. The proposed Lrs namely Nandkumar Sommanna Gawade be added as plaintiff to the present suit.
3. Issue notice to Sulochana Ishwar basargekar, Parvati Shankar Patil, Subhash Sommanna Gawade, Sattuppa Sommanna Gawade, calling there say in respect of adding them as party present suit as Lrs of deceased plaintiff no. 1/6.

4. The learned advocate for plaintiffs is at liberty to bring them on record as legal heirs of deceased plaintiff 1/6 in Oder to avoid further delay.

Date- 11/11/2024

Chandgad.

(Waman D Jadhav)

Jt. Civil Judge Junior Division,
Chandgad.