

COMMON ORDER BELOW EXH.NOS. 83 & 84

01] Perused the applications for plaintiffs for setting aside abatement order against defendant nos.1,2,4 and 9 and permission to bring on record legal representatives of deceased defendant nos.1,2,4 and 9.

02] As per the applications, defendant nos.1 and 2 had not filed written statement to the suit and suit proceeded ex parte against defendant nos.4 and 9. Previously, this suit had been dismissed for default and thereafter in the year 2009, suit came to be restored. The fact of death of these defendants nos.1,2,4 and 9 was not reported by other defendants to the plaintiffs. So the legal representatives of deceased defendant nos. 1,2,4 and 9 are not brought on record and the said fact came to the knowledge of the plaintiffs, when plaintiffs have gone through the record of the suit and thereafter plaintiffs have filed this application for bringing on record the legal representatives of above deceased defendants.

03] It is the contention of the plaintiffs that there is delay of 8 years 2 months 11 days for bringing on record legal representatives of deceased defendant no.1 Dattu, delay of 13 years 3 months 13 days for bringing on record legal representatives of deceased defendant no.2 Yashwant, delay of 10 years 4 months 25 days for bringing on record legal representatives of deceased defendant no.4 Bapu and delay of 13 years 10 months 03 days for bringing on record legal representatives of deceased defendant

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no.9 Pandu. The surname of the defendants is 'Tambwekar' and they are also known as 'Shelar'. Defendant no.9 'Pandur' was also known as 'Pandurang'. So plaintiffs have prayed for condonation of the said delay, setting aside of the abatement and bringing on record the legal representatives of the deceased defendant nos.1,2,4 and 9.

04] After filing of these applications, notices of these applications came to be issued to the legal representative of the deceased defendant nos.1,2,4 and 9 and the said notices came to be served on the said legal representative vide reports below Exhs.85,86,87,88,89 and 90. However, in spite of the service of the notices, the legal representative of the deceased defendant nos.1,2,4 and 9, have not appeared and not opposed to these applications.

05] Perusal of record shows that this suit is for partition of agricultural properties and it is too old. Perusal of record shows that this suit came to be restored as per the order passed in Misc. Civil Application No.25/2002 on 15/10/2009. So considering the nature of dispute between the parties, the relief of partition claimed by plaintiffs, the old age of this suit, the fact of previous dismissal of suit for default in the year 2002 and its restoration in the year 2009, dates of deaths of defendant nos.1,2,4 and 9, which are 10/11/2004, 09/10/1999, 27/8/2002 and 18/3/1999 respectively, it appears to my mind that considering the age of this suit and nature of dispute between the parties, it will be proper to

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allow the plaintiffs to bring on record the legal representative of the deceased defendant nos.1,2,4 and 9, to avoid multiplicity of proceeding and further complications, in the suit which arise between the parties. At the same time, considering the delay made by plaintiffs for filing this application, plaintiffs are liable to heavy costs, so that in future they will not make any delay and will proceed diligently. So in the light of above discussion, plaintiffs are liable to pay heavy costs.

06] In the light of above discussion, considering the nature of dispute between the parties, delay made by plaintiffs and interests of justice, I proceed to pass the following order:-

ORDER

- A) Application vide Exhs.83 and 84 are allowed subject to payment of costs of Rs.3000/- (Rupees Three thousand only) payable to District Legal Services Authority, Kolhapur.
- B) As this suit is too old and necessary to decide as early as possible, so plaintiffs are directed to make compliance of this order and bring on record legal representative of the deceased defendant nos.1,2,4 and 9 and file on record copy of amended plaint, without fail till next date.

Place:-Panhala.
Date:-05/02/2018

Sd/-
(V.A.Awaghade)
Jt. Civil Judge Junior Division,
Panhala.

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-: CERTIFICATE :-

I affirm that the contents of the P.D.F. file order are same, word to word, as per the original Order.

Name of the Stenographer	Shri.A.A.Patil
Name of Court	Shri. V.A.Awaghade
Date of Dictation	05/02/2018
Order signed by the P.O. on	05/02/2018
Order uploaded on	05/02/2018