

1 Regular Civil Suit No.60/2002.
Babu Chavan Vs. Abaji Chavan
(common order below Exhs.45 & 46)
CNR NO.MHKO17-000166-2002

COMMON ORDER BELOW EXH.NOS. 45 & 46

01] Perused the applications of plaintiffs for condonation of delay and setting aside abatement order passed against defendant nos.9 and 12 and bringing on record their legal representatives as mentioned in these applications.

02] As per the applications, defendant nos.9 has died on 24/9/2004 and defendant no.12 has died on 04/11/2004, however, as plaintiffs are illiterate and old age persons, not having knowledge of law and they are always ill, so they had not got knowledge about the death of these defendants, due to which, the legal representatives are not brought on record within limitation and there is delay of near about 7 years and 6 years respectively for bringing on record legal representatives of these defendants as mentioned in these applications. As this suit is for partition, so if the said legal representatives are not brought on record, then plaintiff will suffer an irreparable loss. Plaintiff has not made delay intentionally. So plaintiff has prayed for permission for bringing on record legal representatives of defendant nos.9 and 12 as mentioned in these applications.

03] Notices of these applications came to be issued to the proposed LRs. In spite of service of notice on legal representatives of defendant no.9(a) to 9(c), they have not appeared. Report of notice issued to defendant no.9 (d) shows that she is no more and

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report of notice issued to defendant no.9 (e) shows that there is a mistake of her surname in the said application as 'Khot' instead of 'Gaikwad'. Thereafter again notice came to be issued to the said proposed LRs 9(e) Kamal in the name of Kamalabai Manaku Gaikwad and the same came to be served on her vide report below Exh.101. Record shows that notices of these applications came to be served on the LRs of defendant no.12 vide report below Exh.69,70 and 71, however, they have not appeared.

04] Perusal of record shows that this suit is for partition in respect of immovable property. So considering the reason for delay mentioned in the applications for bringing on record legal representatives of deceased defendant nos.9 and 12, ages of both the sides and age of this suit, so also for avoiding multiplicity of litigations between the parties, and in the interest of justice, it will be proper to allow the plaintiff to bring on record legal representatives of deceased defendant nos.9 and 12. At the same time, heavy costs is necessary to impose on plaintiff for the said delay, so that in future, plaintiff will act diligently. In the light of above entire discussion, I proceed to pass the following order:-

ORDER

- A) Applications vide Exhs.45 and 46 are allowed subject to payment of costs of Rs.1000/- (Rupees One thousand only) payable to District Legal Services Authority, Kolhapur.

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B) As this suit is too old and necessary to decide as early as possible, so plaintiff is directed to make compliance of this order and bring on record legal representative of the deceased defendant nos.9 and 12 and file on record copy of amended plaint, without fail till next date.

Place:-Panhala.
Date:-01/03/2018

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

-: 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	01/03/2018
Order signed by the P.O. on	01/03/2018
Order uploaded on	01/03/2018