

ORDER BELOW EXH. 170

01. Present application is filed by the counter plaintiff to brought the legal heirs of deceased counter defendant No.1 on record.

02. In short, it is the contention of the counter plaintiff that, as counter defendant No.1 Gorakhnath died on 10.03.2011 and he is having the legal heirs is mentioned in the application. Due to oversight legal heirs could not be added as a party. The delay is not intentional. In suit already the L.Rs. are brought on record. Therefore, no prejudice will cause to counter defendants, if the L.Rs. of counter defendant No. 1 came to be brought on record. Hence, prayed to condone the delay and the L.Rs. be added.

03. Original plaintiff opposed the application contended that Gorakhnath died on 10.03.2011 and the application is filed on 25.10.2017. His L.Rs. are brought on record by the original plaintiff. There is considerable delay in filing the application. The L.R.S. needs to be brought on record within 90 days. Hence, prayed to reject the application with costs.

04. Heard both the parties. It appears that there is delay of 6 years in bringing L.Rs. on record. The original plaintiff has already brought the L.Rs. of deceased Gorakhnath on record on 28.06.2011, in spite of that the counter plaintiff failed to make the application. Though this is the position, it is necessary to mention here that the present suit is for partition, therefore, though L.Rs. of Gorakhanth are not brought on record within limitation but right to sue is survived. Therefore, the

2 R.C.S. No. 215/2010
Gorakhnath Vs. Mohan & oth.

counter claim cannot be abated, considering provision of Order 22 Rule 1. Therefore, it is necessary to condone the delay and brought the L.Rs. of Gorakhnath on record. As the application is filed at belated stage, it is necessary to impose the costs on counter plaintiff. Hence, I pass following order.

ORDER

Application is allowed subject to costs of Rs. 750/-.

Sd/-

(R. P. Kulkarni)

Civil Judge Senior Division,
Nilanga.

Nilanga.

Dated : 24.11.2017.