

MHLA11-000197-2008

Order below application vide Exh.478
in RCS No. 181/2008
Sou. Kalubai and Ors. Vs. Pandurang and Ors.

Perused contents of applications and say thereon. Heard to both sides. Perused record and proceeding. Learned advocates for the parties submitted contents of the applications and say thereon.

2. Plaintiff No.1/1 Vijaykumar Tukaram Gaware expired on 19/01/2026. He has legal heirs viz. 1. Panchafula W/o. Vijaykumar Gaware, 2. Amol Vijaykumar Gaware and 3. Ratnmala Santosh Bhosale. Due to lack of knowledge about the present proceeding, above said legal representatives are not brought on record within time. Aforesaid legal representatives themselves applied for bringing them on record as they are legal representatives of deceased plaintiff No.1/1 Vijaykumar Tukaram Gaware. Those are necessary party and their presence is also necessary to the present suit. The plaintiff lastly prayed to condone the alleged delay occurred for bringing the legal representatives of deceased plaintiff No.1/1 Vijaykumar Tukaram Gaware on record. The defendant objected that, right to sue does not survive in favour of aforesaid legal representatives. So, no question would be arisen to bring them on record. The contents of the application are false. The aforesaid legal representatives have no rights in the suit property. Delay is not explained. Heirship certificate is not obtained from competent authority. Hence, the application may be rejected.

3. The present suit is for partition and separate possession. Averment in the plaint, itself discloses that the plaintiffs and defendants No.1 and 2 are interse brother and sister. The plaintiffs allege that themselves and the defendants have legal rights in the suit property. Some suit property is alleged to have been alienated illegally. The plaintiffs are seeking partition and separate possession of their share.

4. The defendants denied the plaintiff's entire claim and lastly contended to dismiss the suit. In such circumstances, the right to sue survives with the aforesaid legal representatives of deceased plaintiff No.1/1 Vijaykumar Tukaram Gaware. Undoubtedly, there is delay. However, considering aforesaid facts, rival pleadings and nature of relief as sought for, delay may be compensated with the costs. Affidavit vide Exh.479 filed along with present application, also discloses that, the facts in the application are true and correct. Considering rival pleadings, nature of the relief sought for delay will have to be compensated with the costs.

5. Moreover, the plaintiffs will be entitled to the alleged reliefs or not will be decided after conclusion of trial and on merits. In such circumstances, no prejudice would be caused to the defendants, if aforesaid legal representatives are brought on record. Hence, in the interest of the justice, I pass following order.

ORDER

1. Applications vide Exh.478 is allowed.

2. Delay for making parties to the aforesaid legal heirs of deceased plaintiff No.1/1 Vijaykumar Tukaram Gaware is hereby condoned, subject to costs of Rs.600/- (Rupees Six Hundred Only) payable by the aforesaid legal representatives to the defendants.

Date :04/08/2026
Place: Nilanga

(R. V. Pande)
Civil Judge, Senior Division, Nilanga,
District Latur.