

CNR NO.110015042018

Common Order below applications vide Exh.119 and 121
in RCS No. 438/2018
Faiyyaj Vs. Usman 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. Defendant No.11 failed to file his say. The suit is old one i.e. of year 2018. It should be proceeded further on priority basis. Therefore, the present applications are proceeded further without say of defendant No.11.

2. The applications disclose that, defendant No.4/3 Shamim Pashamiyan Hashmi expired on 31.05.2022, prior to making him party to the present suit. He has legal heirs viz. 1. Aamera Shamim Hashmi, 2. Mahamad Shamim Hashmi, 3. Sameer Shamim Hashmi and 4. Shafiq Shamim Hashmi.

3. The plaintiff had applied vide Exh.95 for making parties to the legal heirs of deceased defendant No.4 Pashamiyan Mehaboob Hashmi, which has been allowed on 28.04.2022. Thereafter, the defendants had filed application for dismissal of the suit. So also, deceased defendant No.4/3 Shamim Pashamiyan Hashmi was residing out of station due to which information about him could not be obtained easily. Under such circumstances, the plaintiff could not get knowledge about the death of defendant No.4/3 Shamim Pashamiyan Hashmi.

Therefore, the plaintiff remained unable to make parties to the legal heirs of deceased defendant No.4/3 Shamim Pashamiyan Hashmi within time. Therefore, the plaintiff is lastly seeking for setting aside abatement of the suit against deceased defendant No.4/3 Shamim Pashamiyan Hashmi, condonation of delay caused to make parties to his legal heirs and for making parties to his aforesaid legal heirs.

4. Learned advocate Shri. M. U. Talikhedkar appeared for legal heirs of deceased defendant No.4/3 Shamim Pashamiyan Hashmi.

5. The defendants contended that, the plaintiff was aware of death of defendant No.4/3 Shamim Pashamiyan Hashmi as both of them were living at same village. Contents of the application are not trustworthy. The reason for delay is not satisfactory. There is no documentary evidence about legal heirs. The applications are objected. The defendants lastly prayed to reject the applications.

6. However, present applications are supported with affidavits vide Exh.120 and Exh.122. Affidavits vide Exh.120 and Exh.122 disclose that, defendant No.4/3 Shamim Pashamiyan Hashmi expired on 31.05.2022. The plaintiff had applied vide Exh.95 for making parties to the legal heirs of deceased defendant No.4 Pashamiyan Mehaboob Hashmi, which has been allowed on 28.04.2022. Thereafter, the defendants have filed application for dismissal of the suit. So also, he was residing out of station due to which information about him could not be

obtained easily. Under such circumstances, the plaintiff could not get knowledge about the death of defendant No.4/3 Shamim Pashamiya Hashmi.

7. Affidavits vide Exh.120 and Exh.122 also disclose that, deceased defendant No.4/3 Shamim Pashamiya Hashmi has legal heirs viz. 1. Aamera Shamim Hashmi, 2. Mahamad Shamim Hashmi, 3. Sameer Shamim Hashmi and 4. Shafiq Shamim Hashmi. Death extracts filed along with list vide Exh.118 discloses that, defendant No.4/3 Shamim Pashamiya Hashmi expired on 31.05.2022.

8. There is nothing on part of the defendants or proposed legal heirs to disbelieve contents of affidavits vide Exh.120 and Exh.122. The defendants never denied fact of death of defendant No.4/3 Shamim Pashamiyan Hashmi.

9. Moreover, the suit is for partition, separate possession and declaration that, sale-deed executed by defendant No.1 in favour of defendants No.4 to 16 is not binding on the plaintiff's share. The averment in the plaint, prima-facie reveals that the plaintiff and defendants No.1 to 3 are inter-se relatives viz. Brothers and Sister. The defendants denied entire claim of the plaintiff and lastly contended to dismiss the suit. Therefore and considering the rival pleadings, it makes clear that right to sue survives to the plaintiff against the aforesaid legal heirs. Furthermore, whether the plaintiff will be entitled for the reliefs sought for or not will be decided after conclusion of trial and on merits. So also, the parties will have an opportunities to adduce

their evidence and cross examine the witnesses. Therefore, no prejudice will cause to either aforesaid legal heirs or to the present defendants by adding the aforesaid legal heirs as parties to the suit.

10. In such circumstances, mere contentions in say as aforesaid are not sufficient to decline the setting aside of abatement of the suit against defendant No.4/3 Shamim Pashamiyan Hashmi and making parties to his legal heirs.

11. Undoubtedly, there is delay. However, considering the aforesaid facts, circumstances and record, the delay may be compensated with the costs. Hence, in the interest of justice, I pass following order.

ORDER

1. Applications vide Exh.119 and Exh.121 are allowed.
2. Abatement of the suit against deceased defendant No.4/3 Shamim Pashamiyan Hashmi is hereby set-aside, delay for making parties to his aforesaid legal heirs is hereby condoned and the plaintiff is permitted to make parties to his aforesaid legal heirs subject to costs of Rs.4,000/- (Rupees Four Thousand only) payable by the plaintiff to the defendants.

Date :09/06/2026
Place: Nilanga

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