

CNR NO.110015042018

**Common Order below applications vide Exh.135, Exh.137
and Exh.139 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. Legal representative No.10/2 served with the notice vide Exh.144/1, however he failed to remain present. 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 and ex-parte against Legal representative No.10/2 of deceased defendant No.10 Pashamiyan Usman Shaikh.

2. The applications disclose that, defendant No.10 Pashamiyan Usman Shaikh expired on 23.08.2023. He has legal heirs viz. 1. Allamma Pashamiyan Shaikh, 2. Hanna Pashamiyan Shaikh, 3. Layak Pashamiyan Shaikh, 4. Jaibun Abbas Patel and 5. Noorjahan Ayyubkhan Pathan.

3. Defendant No.10 was old aged. Information about his death could not be received to the plaintiff within time. Therefore, the plaintiff is lastly seeking for setting aside abatement of the suit against deceased defendant No.10 Pashamiyan Usman Shaikh, condonation of delay caused to make

parties to his legal heirs and for making parties to his aforesaid legal heirs to the present suit.

4. Learned advocate Shri. P. G. Jawalgekar appeared for legal heirs No.1 and 3 and learned advocate Shri. V. V. Kulkarni appeared for legal heirs No.4 and 5 of deceased defendant No.10 Pashamiyan Usman Shaikh.

5. The defendants contended that, contents of the application are not reliable, the plaintiff and the defendants are living in same village. The applications are strongly objected. The defendants lastly prayed to reject the applications.

6. However, present applications are supported with affidavits vide Exh.136, Exh.138 and Exh.140. Affidavits vide Exh.136, Exh.138 and Exh.140 disclose that, defendant No.10 Pashamiyan Usman Shaikh expired on 23.08.2023. He was old aged. Information about his death could not be received to the plaintiff due to which the plaintiff remained unable to make parties to aforesaid legal heirs of deceased defendant No. 10 Pashamiyan Usman Shaikh within time.

7. Affidavits vide Exh.136, Exh.138 and Exh.140 also disclose that, deceased defendant No.10 Pashamiyan Usman Shaikh has legal heirs viz.1. Allamma Pashamiyan Shaikh, 2. Hanna Pashamiyan Shaikh, 3. Layak Pashamiyan Shaikh, 4. Jaibun Abbas Patel and 5. Noorjahan Ayyubkhan Pathan. Death extracts filed along with list vide Exh.129/15 discloses that, defendant No.10 expired on 23.08.2023.

8. There is nothing on part of the defendants or proposed legal heirs to disbelieve contents of affidavits vide Exh.136, Exh.138 and Exh.140. The defendants never denied fact of death of defendant No.10 Pashamiyan Usman Shaikh.

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.10 Pashamiyan Usman Shaikh 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.135, Exh.137 and Exh.139 are allowed.
2. Abatement of the suit against deceased defendant No.10 Pashamiyan Usman Shaikh 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.