

Dagu Karbhari Uphade and ors.

Vs

Khanderao Shaitrao Uphade and ors.

**Common Order passed below Exhs. 109, 110, 111 and 112
in R.C.S. No. 228/2012.**

The application below Exh.109 is filed by the plaintiff to set aside abatement in respect of the defendant no.3 Smt. Anusaya Shaitrao Uphade and the defendant no.19 Smt. Rajubai Hari Uphade as they died on 21/09/2008 and 25/01/2016 respectively. The reason assigned by the plaintiff for presenting this application with delay is that the plaintiff are illiterate person and they have no knowledge of existing provisions of law. Hence, the plaintiff also moved an application to condone the delay in this regard below Exh.110. The application below Exh.111 is filed by the plaintiff to take the legal representatives of the defendant no.22 Smt. Rajubai Amruta Uphade as she died on 14/07/2019. The names of her legal representatives are also mentioned in this application. Again below Exh.112, an application is moved by the plaintiff for praying to allow them to carryout amendment as the legal representatives of defendant no.3 are already impleaded in the suit.

2. The defendants no. 23 to 33 filed their say on each of this application. According to the defendants no.23 to 33, delay

::2::

is not properly explained and by moving these applications, the plaintiffs are trying to prolong the matter unnecessarily.

3. Considering the applications, say and argument of both the parties, following points arise for my determination and I have recorded my findings alongwith reasons stated as under :-

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the applications below Exhs.109, 110, 111 and 112 should be allowed ?	Yes.
2.	What order ?	As per final order.

REASONS

AS TO POINT NOS. 1 AND 2 :-

4. On perusal of record of the suit and the applications, it appears that suit is filed regarding declaration, possession and partition of the ancestral property. The plaintiff and defendants are allegedly the coparceners having their respective share in the suit property. Hence, while deciding suit claim, all the persons who are having share in the suit property should be included in the suit as party. In case, either of such share dies, his or her legal representatives have to be taken on record. Hence, I am of the opinion that all these four applications have to be allowed. Therefore, I answer point no.1 in affirmative. However, the hardship is caused to the defendants because of the delay. It is required to be compensated in the terms of money. In answer to the point

::3::

no.2, I proceed to pass the following order :-

-: ORDER :-

The applications below Exhs.109, 110, 111 and 112 are allowed subject to cost of Rs. 300/- to each of the defendants no. 23 to 33.

Date :- 30/09/2019.
Place :- Dindori.

(Smt. S. P. Kulkarni)
Civil Judge, J. D.,
Dindori.