

ORDER BELOW EX. 39, EX. 41, Ex. 43, Ex. 45 & EX. 47

(Passed on 3rd October 2019)

1. These are applications under section 5 of Limitation Act condonation of delay at Ex. 39 & Ex. 45, for Setting Aside the abatement of suit and under Order 22 Rule 3 of Code of Civil Procedure Code, 1908, at Ex. 41 and for permission to bring the legal representatives of deceased Gayabai Vishnu Borse plaintiff No. 1 at Ex. 43 and deceased Vithoba Chabbu Kolhe plaintiff No. 9a at Ex. 47 on record preferred by plaintiffs.

2. Perused the applications at Ex. 39, Ex. 41, Ex. 43, Ex. 45 & Ex. 47 and read the reply. I have heard Mr. P. N Borse learned counsel for plaintiffs, Mr. V.A Ghule learned counsel for defendant No. 1 and other defendants failed to file say inspite of availing sufficient opportunity.

3. Mr. Borse learned counsel for plaintiffs submitted that plaintiffs have filed suit for cancellation of sale deed, declaration and permanent injunctions against the defendants. Mr. Borse submitted that the persons mentioned in application are the legal representatives of deceased Gayabai Vishnu Borse plaintiff No. 1 who died on 29-05-2018 and deceased Vithoba Chabbu Kolhe plaintiff No. 9a who died on 05-03-2017 and the plaintiffs failed to get proper address of legal heirs and even death certificate of deceased plaintiff No. 1 and plaintiff No. 9a before filing the instant application. Mr. Borse also submitted that plaintiffs family member were suffering from swine flue hence,

they could not give the information with regards to death of plaintiff No. 1 and plaintiff No. 9a. Mr. Borse further submitted that plaintiffs are layman and being illiterate could not file application for bringing legal heirs of deceased plaintiff No 1 and plaintiff No. 9a on record within time hence, present applications are filed on record. Mr. Borse submitted that plaintiffs have sufficient and reasonable cause for not filing the application within specified time and accordingly prayed to condone the delay of around 227 days in bringing legal representatives of deceased plaintiff No 1 and delay of around 645 days in bringing legal representatives of deceased plaintiff No. 9a on record and to allow the instant applications at Ex. 39, Ex. 41, Ex. 43, Ex. 45 & Ex. 47

4. Mr. Ghule learned counsel for defendant No. 1 vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mr. Ghule submitted in consonance to his reply and further submitted that there is delay of around 227 days in bringing legal representatives of deceased plaintiff No 1 and delay of around 645 days in bringing legal representatives of deceased plaintiff No. 9a on record. Mr. Ghule submitted that applications are bogus, vexatious and time barred and prayed to outrightly reject it with heavy cost.

5. The plaintiffs are seeking liberty to bring on record the legal representatives of deceased Gayabai Vishnu Borse plaintiff No. 1 and deceased Vithoba Chabhu Kolhe plaintiff No. 9a. The dates of death of deceased plaintiff No. 1 is 29-05-2018,

deceased plaintiff No. 9a is 05-03-2017 and the present applications at Ex. 39 and Ex. 45 are filed on 10-04-2019 i.e beyond 90 days from the date of death of deceased deceased Gayabai Vishnu Borse plaintiff No. 1 and deceased Vithoba Chabbu Kolhe plaintiff No. 9a.

6. The present application is supported by an affidavit stating the genuine reasons for not preferring the application at Ex. 39, Ex. 43, Ex. 45 and Ex. 47 within stipulated time. The plaintiffs had sufficient cause which prevented them from making application for bringing legal representatives of deceased Gayabai Vishnu Borse plaintiff No. 1 and deceased Vithoba Chabbu Kolhe plaintiff No. 9a on record. The abatement needs to be set aside in the interest of justice.

7. In order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit, it is necessary to allow the application to bring on record the legal representatives of deceased Gayabai Vishnu Borse plaintiff No. 1 and deceased Vithoba Chabbu Kolhe plaintiff No. 9a. There appears to be no other legal heirs except those named in application. Thus it is therefore necessary in the interest of justice to allow the applications as plaintiffs have shown sufficient cause for not preferring application within specified time.

8. On going through the instant applications in the light of pleadings of both parties and arguments canvassed before me this court is satisfied that it is necessary to condone the delay for

bringing the legal representatives of plaintiff No. 1 and plaintiff No. 9a on record and for the purpose of determining the real question in controversy between the parties and for the fair adjudication of trial and to bring legal representatives of plaintiff No. 1 and plaintiff No. 9a on record. It is pertinent to state that no prejudice would be caused to other defendants if they are compensated by way of costs. In the result I am inclined to pass the following order.

ORDER

1. The application at Ex. 39, Ex. 41, Ex. 43, Ex. 45 & Ex. 47 are allowed.
2. The delay is condoned for bringing legal representatives of plaintiff No. 1 and plaintiff No. 9a on record.
3. The plaintiffs are allowed to bring the legal representatives of plaintiff No. 1 and plaintiff No. 9a on record of the suit within 14 days from the date of the order (2 weeks).
4. The plaintiffs are directed to pay cost of Rs. 700/- (Seven Hundred Only) to the other side. On failure to pay cost instant applications shall stands automatically rejected.

Place:- Chandwad

Date:- 03-10-2019

(N. A Ingley)

Civil Judge Junior Division

Chandwad