

ORDER BELOW EX. 94, EX. 96 & EX. 98**(Passed on 06th February 2020)**

1. These are applications under section 5 of Limitation Act condonation of delay at Ex. 96, for Setting Aside the abatement of suit and under Order 22 Rule 4 of Code of Civil Procedure Code, 1908, at Ex. 94 and for permission to bring the legal representatives of deceased Gangubai @ Laxmibai Haribhau Jadhav, defendant No. 18 at Ex. 98 on record preferred by plaintiffs.

2. Perused the applications at Ex. 94, Ex. 96 & Ex. 98 and read the reply. I have heard Mr. A.T Deore learned counsel for plaintiffs and Mr. S.A Shelke learned counsel for defendant No. 1 and other defendants failed to file say inspite of availing sufficient opportunity.

3. Mr. Deore learned counsel for plaintiffs submitted that plaintiffs have filed suit for declaration, partition, separate possession and permanent injunctions against the defendants. Mr. Deore submitted that the persons mentioned in application are the legal representatives of deceased Gangubai @ Laxmibai Haribhau Jadhav, defendant No. 18 who died on 16-03-2017 and the plaintiffs failed to get proper address of legal heirs and even death certificate of deceased defendant No. 18 before filing the instant application. Mr. Deore further submitted that plaintiffs are layman and being illiterate could not file application for bringing legal heirs of deceased defendant No. 18 on record within time hence, present applications are filed on

record. Mr. Deore 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 one year 73 days in bringing legal representatives of deceased defendant No. 18 on record and to allow the instant applications at Ex. 94, Ex. 96 & Ex. 98.

4. Mr. Shelke learned counsel for defendant No. 1 vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mr. Shelke submitted in consonance to his reply and further submitted that there is delay of around one year 73 days in bringing legal representatives of deceased defendant No. 18 on record. Mr. Shelke submitted that the explanation tendered by plaintiffs does not appear to be probable and convincing. Mr. Shelke 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 Gangubai @ Laxmibai Haribhau Jadhav, defendant No. 18. The dates of death of deceased defendant No. 18 is 16-03-2017 and the present applications at Ex. 94 and Ex. 96 are filed on 27-08-2019 i.e beyond 90 days from the date of death of deceased Gangubai @ Laxmibai Haribhau Jadhav, defendant No. 18

6. The present application is supported by an affidavit stating the genuine reasons for not preferring the application at Ex. 94, Ex. 96 and Ex. 98 within stipulated time. The plaintiffs had

sufficient cause which prevented them from making application for bringing legal representatives of deceased Gangubai @ Laxmibai Haribhau Jadhav, defendant No. 18 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 Gangubai @ Laxmibai Haribhau Jadhav, defendant No. 18. 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 deceased Gangubai @ Laxmibai Haribhau Jadhav, defendant No. 18 on record and for the purpose of determining the real question in controversy between the parties and for the fair adjudication of trial. 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. 94, Ex. 96 & Ex. 98 are allowed.

2. The delay is condoned for bringing legal representatives of deceased Gangubai @ Laxmibai Haribhau Jadhav, defendant No. 18 on record.

3. The plaintiffs are allowed to bring the legal representatives of deceased Gangubai @ Laxmibai Haribhau Jadhav, defendant No. 18 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:- 06-02-2020

(N. A

Ingley)

Civil Judge Junior

Division

Chandwad