

ORDER BELOW EX. 42, EX. 44 & EX. 46.**(Passed On 22nd November 2021)**

1. These are applications under section 5 of Limitation Act condonation of delay at Ex. 42, under Order 22 Rule 3 of Code of Civil Procedure Code, 1908 for permission to bring the legal representatives of deceased plaintiff No. 5 Shehjadi Bano Sheikh Husain on record at Ex. 44 and for Setting Aside the abatement of suit at Ex. 46 preferred by plaintiffs.

2. Perused the applications at Ex. 42, Ex. 44 & Ex. 46 and read the reply. I have heard Mr. B.V. Mistri learned counsel for plaintiffs and Mr. R.C. Mistri learned counsel for defendants.

3. Mr. Mistri learned counsel for plaintiffs submitted that plaintiffs have filed suit for possession of encroached portion of suit land against the defendants. Mr. Mistri submitted that the persons mentioned in application are the legal representatives of deceased plaintiff No. 5 Shehjadi Bano Sheikh Husain who died on 10-01-2020 and even death certificate of deceased plaintiff No. 5 Shehjadi Bano Sheikh Husain could not be obtained before filing the instant application. Mr. Mistri further submitted that there was lock down due to COVID-19 situation and even plaintiffs being layman and illiterate could not file application for bringing legal heirs of deceased plaintiff No. 5 Shehjadi Bano Sheikh Husain on record within time hence, present applications are filed on record. Mr. Mistri 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 1 year 8 months in bringing legal representatives of deceased plaintiff No. 5 Shehjadi Bano Sheikh Husain on record and to allow the instant applications at Ex. 42, Ex. 44 & Ex. 46.

4. Mr. Jadhav learned counsel for defendants vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mr. Jadhav learned counsel for defendants submitted in consonance to his reply and further submitted that there is delay of around 1 year 8 months in bringing legal representatives of deceased plaintiff No. 5 Shehjadi Bano Sheikh Husain on record. Mr. Jadhav learned counsel for defendants submitted that the explanation tendered by plaintiffs does not appear to be probable and convincing. Mr. Jadhav 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 plaintiff No. 5 Shehjadi Bano Sheikh Husain. The date of death of deceased plaintiff No. 5 Shehjadi Bano Sheikh Husain is 10-01-2020 and the present applications are filed beyond stipulated period from the date of death of deceased plaintiff No. 5 Shehjadi Bano Sheikh Husain.

6. The present applications are supported by an affidavit stating the genuine reasons for not preferring the application at Ex. 42, Ex. 44 & Ex. 46 within stipulated time. The plaintiffs had sufficient cause which prevented them from making

application for bringing legal representatives of deceased plaintiff No. 5 Shehjadi Bano Sheikh Husain 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 plaintiff No. 5 Shehjadi Bano Sheikh Husain. 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 plaintiff No. 5 Shehjadi Bano Sheikh Husain 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 proposed legal representatives 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. 42, Ex. 44 & Ex. 46 are allowed with costs.

2] The delay is condoned for bringing legal representatives of deceased plaintiff No. 5 Shehjadi Bano Sheikh Husain on record.

3] The plaintiffs are allowed to bring the legal representatives of deceased plaintiff No. 5 Shehjadi Bano Sheikh Husain 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. 350/- (Three Hundred And Fifty Only) to the other side & Rs. 350/- (Three Hundred And Fifty Only) in TLSA/DLSA. On failure to pay cost instant applications shall stands automatically rejected.

Place :- Chandwad.

Date :- 22-11-2021.

(N. A. Ingley)
Civil Judge Junior Division
Chandwad

CERTIFICATE

I affirm that the contents of this PDF file are same as per original order.

Name of Stenographer :- Sau. Gayatri K. Suryawanshi.
Court Name :- Civil Judge Junior Division
Chandwad.
Date of Decision :- 22-11-2021.
Signed by presiding officer :-
23-11-2021.
Uploaded on :- 23-11-2021.