

ORDER BELOW EXH.105

The present application is filed by the plaintiffs for setting aside abatement to bring the legal representatives of the deceased defendant, Baburao Bhikaji Jadhav, on record.

2. Plaintiffs contention that the present suit is filed for declaration and perpetual injunction. They further have a contention that the defendants appeared and filed a written statement. The suit is sub-judice. They further contention that the pendency of the suit defendant, Baburao Bhikaji Jadhav died on 23.10.2022. After his death, he left the legal representatives. The plaintiff's contention is that the suit is related to immovable property. The deceased legal representatives have rights in the suit. Therefore, it is necessary to bring this to record. There is also a delay in setting aside abatement. Said delay is not intentional. Plaintiffs will suffer an irreparable loss if the delay for the abatement order is not set aside. Hence, prayed to allow the application and set aside abatement.

3. Defendants' legal representatives appeared and filed a vide Exh. 117. It is submitted that during the pendency of a suit, the defendant, Baburao Bhikaji Jadhav, died on 23.10.2022 due to illness. It is submitted that the death of said defendant has informed the plaintiffs; however, they did not take any steps. The plaintiffs and the defendant reside side by side. The plaintiffs are aware of the death of the defendant. They further submitted that the plaintiffs and the defendant have had a dispute since beginning with each other. The dispute has been decided. The defendants contended that the plaintiffs had no interest in the suit. They have deliberately caused

the delay. Hence, the application is liable to be rejected. Finally, prayed to reject the application with costs.

4. Heard respective advocates of both parties.

5. Perused the application, say and documents.

6. After perusing the *rozanama* and proceeding, it appears that this is an application filed by plaintiffs for condonation of delay for setting aside abatement. The present suit is with respect to the immovable properties. The rights of all the representatives of deceased defendants involve in the said suit. Hence, all parties are necessary parties in the suit. It is a cardinal principle of law that the Court should determine the suit on merit rather than technicality. The parties should get a fair opportunity. It is well settled that the Court has ample power to do justice. It is well settled that while condoning the delay, the court should be liberal. If the application is allowed, no prejudice will be caused to the defendants. Rather, it will help to decide the matter in controversy. On the contrary, the plaintiffs would suffer irreparable loss if the application is rejected. The Court has to take a liberal view while deciding the delay application. Hence, it is necessary to decide on merit and avoid a multiplicity of suits; the abatement needs to be set aside. The delay is condoned vide Exh.103. The plaintiffs have complied with the cost. Hence, I pass the following order.

ORDER

1. The application is allowed,
2. The abatement is set aside.

Date: 30.04.2024.
Place: Yeola

(S. B. Rathod)
2nd Jt. Civil Judge, Junior Division,
Yeola.