

Common order below Exh. 98 and 100 in R.C.S. No. 55/1994.

1. The plaintiff has filed application Exh. 98 supported by an affidavit for setting aside abatement order passed against defendant No. 7 and application Exh. 100 for bringing legal heirs of deceased defendant No. 7 contending therein that the plaintiffs have instituted suit for declaration and consequential reliefs thereof. They further submitted that, during pendency of present suit, defendant No. 7 Smt. Gangubai Trambak Tile expired on 25.02.2016 leaving behind the legal heir mentioned in application and said legal heir be brought on record in order to decide the matter on merit at once. Hence, prayed for allowing application by condoning delay.

2] Say of other side was called, but other side has not given say, though sufficient opportunity given, hence application proceeded without say.

3] Heard learned counsel for plaintiffs. On perusal of certified copy of death certificate filed with list Exh. 104. It appears that, defendant No. 7 Gangubai Trambak Tile expired on 25.02.2016. Since then, the plaintiffs have to bring legal heirs on record within stipulated period from the date of knowledge of death of deceased. It appears from record, the plaintiff has filed present application on 30.08.2016 & Gangubai was expired on 25.02.2016. Hence, approximately delay about 95 days has been caused in bringing legal heir on record. Present suit is for declaration in respect of suit property and rights of proposed defendant No. 7 are involved in the suit property. The right to sue survives. It is true that, the delay has been caused in filing application, however said delay can be condoned by saddling costs on the plaintiffs. Hence, I am inclined to pass following order.

ORDER

- 1] Application at Exh. 98 and 100 are allowed subject to costs of Rs.500/- (Rupees five hundred only).
- 2] After payment of costs, the plaintiff is permitted to bring the legal heirs of defendant No. 7 within stipulated period.
- 3] After bringing proposed legal heir defendant No. 7A on record, issue suit summons to her on P.F.

Place : Sinnar.
Date : 10.10.2016.

Sd/xxx
(S. N. Ratkanthwar-Jawadwar)
Civil Judge (Junior Division), Sinnar.