

Order below Exh.51 in Spl.C.S. No.283/2023
(Santosh Vs. Punja & Ors.)

This is an application filed by plaintiff for deletion of name of defendant Nos.3 and 4 from the array of defendants. The plaintiff submits that, defendant No.3 Kondaji Shankar Ilag is dead. The application for bringing on record his legal representatives is already filed. Defendant No.4 Smt.Laxmibai Kondaji Ilag died on 10.01.2023. The legal representatives of defendant Nos.3 and 4 are already on record in the capacity of defendant Nos.1, 5, 6, 7, 16 to 19. Apart from these defendants, there are no legal representatives of deceased defendant Nos.3 and 4. On this count the plaintiff has prayed for deletion of name of defendant Nos.3 and 4. The application is opposed by filing say by defendants. It is contended that, the plaintiff came to know about the death of defendants on 10.01.2023. He has not filed application within limitation. The suit is automatically abated against defendant No.4. The plaintiff has not filed the application for setting aside abatement. There is delay of 13 months for filing the application. The plaintiff has not applied for condonation of delay. Therefore, the defendants prayed for rejection of the application.

2. Heard learned advocate for the plaintiff. The defendants and their advocate are absent when called for hearing on the application. The suit is filed for the relief of partition and consequential reliefs. Vide application Exh.28, the plaintiff applied for bringing on record the legal representatives of defendant No.3. That application is already allowed as per order below Exh.28 dated 01.09.2018. There is specific mention in the order that, already legal representatives of deceased defendant No.3 are on record. Vide this application, the

plaintiff is seeking the relief of deletion of names of defendant Nos.3 and 4 on the count that their legal representatives are already on record. The plaintiff wants to delete the names of defendant Nos.3 and 4 from the array of defendants as their legal representatives are already on record. In such circumstances, no prejudice would be caused to the other defendants if the application is allowed. However, considering the delay in filing application in respect of defendant No.4, it would be proper to direct the plaintiff to pay costs of Rs.300/- to T.L.S.A., Sinnar. Hence, I pass the following order,

ORDER

1. The application is allowed subject to costs of Rs.300/- (Rupees Three hundred) to be paid to T.L.S.A., Sinnar on or before next date.
2. On payment of cost, the plaintiff shall delete the names of defendant Nos.3 and 4 from the array of defendants.

Date : 23.08.2024.

**Sd/-xxx
(R. S. Kanade)
Civil Judge S.D., Sinnar.**