

ORDER BELOW EXH. 62 & 64 IN REGULAR CIVIL SUIT NO.09/2011

An application vide Exh. 62 moved by the plaintiff for under Section 5 of the Limitation Act for condonation of delay and application vide Exh. 64 moved for bringing legal representative defendant No. 1 on record.

2) Heard learned advocate for the plaintiff. The legal heirs of defendant No. 1 in spite of receiving notice of the application failed to appear and resist the application. Defendant No. 2 resisted the application by filing his say. Defendant No. 2 contended that Dhanuja Rode is minor. But there is no document on record to fortify the submission of defendant No. 2.

3) The perusal of application revealed that defendant No. 1 Subhash was died on 15.08.2017. According to plaintiff they required for collection of documents hence they failed to bring legal heirs of defendant No. 1 on record within statutory period. Hence, he prayed condone the delay and set aside abatement.

4) The legal heirs of the defendant No. 1 have not objected the application. Hence, the reason stated by plaintiff for delay caused to bring legal heirs of defendant no. 1 on record is unchallenged. Plaintiff instituted suit for the relief of injunction against the defendants. Therefore, right to be sued survives against the legal heirs of defendant no.1. Therefore, in my considered view, the delay caused for setting aside the abatement satisfactorily explained by the plaintiff. Hence, application deserves to be allowed by imposing costs. Hence, I pass following order.

ORDER

- 1) Each application is allowed subject to costs of Rs.100/- (Rupees one hundred only) deposited in the court. Assistant superintendent to credit the costs to the government.
- 2) The plaintiff is directed to carry out necessary amendment in the clause title of the Plaint and file copies of amended plaint for filing written statement to legal heirs of defendant no.1.
- 3) Failure to comply the order on or before next date, application shall be deemed to be rejected.

Dated:- 14.12.2018

(M. D. Thombare)
Jt. Civil Judge, Jr. Dn., Kallam.

ORDER BELOW EXH. 06 IN REGULAR CIVIL SUIT NO.09/2011.

This is an application moved by Ld. Adv. for plaintiff to bring on record legal representatives of defendant No. 1.

2) Heard advocate for the plaintiff and learned advocate for the defendant No.2. Perused the application and say.

3) The perusal of application revealed that defendant No.1 Subhash was died on 15.08.2017. Plaintiff has instituted suit for the relief of perpetual injunction against the defendants. Except proposed defendant No.1 (1) to 1 (3), there are no other legal representative to defendant No.1. As right to be sued survives against legal representatives of defendant No.1. Hence, the application deserves to be allowed. Hence, I proceed to pass the following order.

ORDER

- 1) The application is allowed.
- 2) Plaintiff is permitted to bring the legal representatives of defendant No.1 on record and proceed with suit.
- 3) The plaintiff is directed to carry out necessary amendment in the clause title of the Plaint and file copy of amended plaint.
- 4) Failure to comply the order on or before next date, application shall be deemed to be rejected.

Dated:- 14.12.2018.

(M. D. Thombare)
Jt. Civil Judge, Jr. Dn.,
Kallam.