

COMMON ORDER BELOW EXH. 29 & 31

1. By these applications the legal representatives of deceased plaintiff prayed for condonation of delay in filing application for setting aside abatement and for permission to bring legal representatives of deceased plaintiff on record. Read the applications and reply of defendants. Heard Ld. advocates for rival parties.

2. Ld. Advocate for deceased plaintiff submitted that, the plaintiff died on 23/01/2019. Present applicant Shrikrishna Maruti Jagtap, his brother Suresh, sister Sunanda and defendant no. 1 are his legal representatives. However, there is cordial discord between applicant and his brothers. For this reason the legal representatives of deceased plaintiff cannot be brought on record and it caused delay of 2 months in making these applications. If the delay in making an application for setting aside abatement is condoned, no prejudice will cause to the defendants. The presence of legal representatives of deceased plaintiff before the court is necessary. Therefore, he prayed to condone the delay caused in making an application for setting aside abatement and to permit bringing of legal representatives of deceased plaintiff on record.

3. Ld. Advocate for defendants submitted that, there is inordinate delay in making present applications. There

is no sufficient cause for making these applications after such a long period. Therefore, he prayed to reject the applications.

4. The suit is for perpetual injunction. Thus, the right to sue survives to the legal representatives of deceased plaintiff. Therefore, his legal heirs should have been brought on record within 90 days as per Article 120 of The Limitation Act. However, no such legal representatives are brought on record. Therefore, the suit is virtually abated against defendants. An application for setting aside abatement should have been made within 60 days from the date of abatement as per Article 121 of The Limitation Act. However, no such application was made by the legal representatives of deceased plaintiff.

5. It is settled position of law that an application for setting aside abatement can be allowed at such belated stage only in exceptional cases and on the party showing sufficient cause. On perusal of record, I found that, on the very next date of the laps of period of limitation for making application for setting aside abatement these applications are made. The applicant prayed to implead him as plaintiff and the other legal representatives of deceased plaintiff as party defendants. It shows that, there is cordial discord between them and it is sufficient cause for allowing these applications. Hence, I pass the following order.

ORDER

- 1- An Applications at exh. 29 & 31 stands allowed.
- 2- The cause title of the plaint be amended accordingly.

Place : Saswad
Date : 07/09/2019

(N.H. Tikhe)
Jt. Civil Judge Junior Division
Saswad

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of Steno : M. D. Shirode, Stenographer, (L.G.)

Court Name : Shri. N. H. Tikhe
Jt.Civil Judge Jr. Division, Saswad.

Date of Order : 07/09/2019

Judgment signed by presiding officer on : 07/09/2019

Judgment uploaded on : 07/09/2019