

MHPU180013342017



R.C.S. No. 237/2017
Dattatraya & Ors.
Vs.
Devaibai & Ors.

ORDER BELOW EXH.31

(Passed On 24/06/2024)

This is an application filed by plaintiffs for abatement set aside against the plaintiff no.2 as under.

2. According to plaintiffs, the present suit filed by them for removal of encroachment and injunction in respect of suit property. The plaintiff no.2 namely Sitaram Dagdu Waghle died on 01/10/2021 i.e. during pendency of the suit. The other plaintiffs have not knowledge about the same. Plaintiffs have not deliberately caused delay to bring legal heirs of deceased the plaintiff no.2 on record. Meanwhile the suit has abated. Therefore, by filing this application plaintiffs requested to abatement set-aside of the plaintiff no.2. Hence, this application.

3. The Ld. Advocate for defendant nos. 1 to 9 have filed their say and thereby strongly opposed the application contending that, the application is not tenable and maintainable in the eyes of law. The reasons mentioned in the application is false. Plaintiffs intents to prolong the matter. Hence, lastly prayed to rejected the present application. Other defendants have not filed their say.

4. Perused the application and say. Heard both sides at considerable length. It is the contention of the plaintiffs that, during the pendency of the suit the plaintiff no. 2 died on 01/10/2021. Other plaintiffs have not knowledge about the procedure and law. They could not intimated the fact in respect of death of the plaintiff no. 2 within stipulated period to the concern Advocate. In support of their contention they have placed on record copy of death certificate of deceased the plaintiff no. 2 below Exh.34. The Ld. Advocate for defendants strongly

opposed the application contending that, it is not tenable and maintainable in the eyes of law and it is filed only to prolong the suit.

5. It appears that, the plaintiff no.2 died on 01/10/2021 and the present application placed on record on 15/04/2024. Much time has lapsed. However, it is pertinent to note here that, the suit is in respect of immovable property. The valuable rights of proposed legal heirs of plaintiff no.2 can be involved therein. Considering the nature and relief sought by plaintiffs against defendants, it is required to give an opportunity to plaintiffs in the interest of justice. Simultaneously it can not be over looked that defendants have harassed and they have caused delay due to act of plaintiffs. Therefore, it is necessary to impose cost upon remaining plaintiffs for delay caused to them for filling this application. Hence following order.

ORDER

- 1) The application is allowed subject to cost of Rs. 1000/- (Rupees One Thousand only) pay to defendant nos. 1 to 9.
- 2) Cost is condition precedent.

Daund.
Dt. 24/06/2024.

(Sharad B. Kaldate)
2nd Jt. Civil Judge (Jr.Dn.),
Daund.

Certificate

I affirm that, the contents of this PDF File are same words to words, as per the original Judgment/Order.

Name of Stenographer : D. A. Merukar, Grade -3
Upload on date : 27/06/2024.