

Reg. Civil Appeal No.165/2016
CNR No. MHRG010031182010
Vijayeta & Ors. Vs. Nurjaha & Ors.

COMMON ORDER BELOW EXH. 22

01. This is an application to condone the delay to bring on record the legal heirs of deceased respondent No.2 Mobin.

02. According to the appellants, they were not aware about the death of respondent No.2 Mobin. On knowledge, they collected the information about the legal heirs of the deceased respondent No.2 Mobin and obtained his death certificate. In such circumstances, there is delay of 5 months which may kindly be condoned.

03. The respondent filed say and resisted the application contending that the delay is intentional and no sufficient ground is shown. Hence, application be rejected.

04. Heard Advocate Shri. P. V. Patil for the appellants. The death certificate of respondent No. 2 is Mobin is produced along with Exh. 24/1 which shows that he died on 19/10/2022. In view of Article 120 of the Limitation Act, legal heirs of the party shall be brought on record within 90 days from the date of the death of the party. Hence, the legal heirs of deceased respondent No. 2 Mobin should have been brought on record on 19/01/2023. On 91st day the appeal automatically abates, but if any legal heir is already on record the proceeding does not

abate. The application is filed on 29/03/2023. Thus, there is delay of 2 months and 10 days.

05. The record shows that the death of respondent No. 2 Mobin was not communicated by his advocate as per Order XXII Rule 10-A of the Code of Civil Procedure. In such circumstances, there is no reason for the appellants to have the knowledge about the death of respondent No.2 Mobin. Further the respondent No.2 Mobin and his heirs are unknown to the appellants and it is quite possible that time may have consumed in collecting the death certificate of the respondent No.2 Mobin and in collecting the information about his legal heirs. Thus, the appellants have shown sufficient cause to condone the delay. Hence, I pass following order -

ORDER

1. The application at Exh. 22 is allowed.
2. The delay to bring on record the legal heirs of respondent No. 2 Mobin Sayeed Munshi is hereby condoned.
3. No order as to the costs.

Alibag,
Date :-04/12/2023.

(N.K. Maner)
District Judge-3,
Raigad-Alibag.

Reg. Civil Appeal No.165/2016
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COMMON ORDER BELOW EXH. 21

01. This is an application to bring on record the legal heirs of deceased respondent No.2 Mobin Sayeed Munshi.

02. It is contended by the appellants that respondent No.2 Mobin died on 19/10/2022 leaving behind him his wife and two sons as his legal heirs. Therefore, it is necessary to bring on record the legal heirs of respondent No.2 Mobin by deleting his name from appeal memo.

03. Heard Advocate Shri. P.V. Patil for the appellants. The death certificate of respondent No.2 Mobin Sayeed Munshi is produced along with Exh. 24/1 which shows that he died on 19/10/2022. The appellant filed affidavit and make statement on oath that the a widow and two sons are the only legal heirs of deceased Mobin Sayeed Munshi. The suit is in respect of immovable property for the relief of declaration of title and right to sue survives against the legal heirs of deceased respondent No. 2 Mobin Sayeed Munshi. Hence, it is necessary to bring on record the legal heirs of deceased respondent No. 2 Mobin Sayeed Munshi by deleting his name. Accordingly, I pass following order -

ORDER

1. The application at Exh. 21 is allowed.
2. The appellant No. 5 is permitted to bring on record the legal heirs of respondent No. 2 Mobin Sayeed Munshi as per application by deleting his name and carry out necessary amendment in the appeal memo.
3. The amendment shall be carried out on before next date.

Alibag,
Date :-04/12/2023.

(N.K. Maner)
District Judge-3,
Raigad-Alibag.

Reg. Civil Appeal No.165/2016
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COMMON ORDER BELOW EXH. 16

01. This is an application to bring on record the legal heirs of deceased appellant No. 7 Jaywanti Dharma Mandlekar @ Khaire.

02. It is contended by the appellant No. 5 that the appellant No.7 Jaywanti Dharma Mandlekar @ Khaire died on 09/01/2022 and the appellants are her only legal heirs. Therefore, it is necessary to delete the name of appellant No.7 Jayavanti Dharma Mandlekar @ Khaire by carrying out necessary amendment in the appeal memo.

03. The respondent filed say and resisted the application contending that the death certificate is not on record.

04. Heard Advocate Shri. P. V. Patil for the appellants. The death certificate of appellant No.7 Jaywanti Dharma Mandlekar @ Khaire is produced along with Exh. 19/1 which shows that she died on 09/01/2022. The appellant No.5 has filed affidavit and make a statement on oath that the appellants are the only legal heirs of deceased Jayavanti Dharma Mandlekar @ Khaire. Further the suit is in respect of the immovable property seeking relief of declaration of title and thus, after the death of appellant No.7 Jayavanti Dharma

Mandlekar @ Khaire, right to sue survives against her legal heirs. Hence, it is necessary to delete the name of appellant No. 7 Jayavanti Dharma Mandlekar @ Khaire from appeal memo. Accordingly, I pass following order -

ORDER

1. The application at Exh. 16 is allowed.
2. The appellants are permitted to delete the name of appellant No.7 Jayavanti Dharma Mandlekar @ Khaire and carrying out necessary amendment in the appeal memo.
3. The amendment shall be carried out on before next date.

Alibag,
Date :-04/12/2023.

(N.K. Maner)
District Judge-3,
Raigad-Alibag.

