

MHRG140022992016



COMMON ORDER BELOW EXHIBITS 66, 68, 70, 72, 74 & 76.

1. This common order shall dispose of six interconnected applications filed by the Plaintiff:
 - (a) Exhibit 66, filed under Order XXII Rule 4 of the Code of Civil Procedure, 1908 (CPC), to bring on record the legal heirs of deceased Defendant No. 45, Smt. Nirmala Namdeo Gawand;
 - (b) Exhibit 68, under Section 5 of the Limitation Act, 1963, for condonation of delay of approximately 3 years in bringing the legal heirs of Defendant No. 45 on record;
 - (c) Exhibit 70, under Order XXII Rule 9 of the CPC, to set aside the abatement of the suit against deceased Defendant No. 45;
 - (d) Exhibit 72, under Order XXII Rule 9 of the CPC, to set aside the abatement of the suit against deceased Defendant No. 9, Smt. Urmila Sambhaji Thakur alias Pranali Pravin Khandagale;
 - (e) Exhibit 74, under Section 5 of the Limitation Act, 1963, for condonation of delay of approximately 19 months in bringing the legal heirs of Defendant No. 9 on record; and
 - (f) Exhibit 76, under Order XXII Rule 4 of the CPC, to bring on record the legal heirs of deceased Defendant No. 9.

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2. The Plaintiff has instituted this suit for declaration of ownership, partition, and permanent injunction. During the pendency of the suit, Defendant No. 45, Smt. Nirmala Namdeo Gawand, passed away on 26/01/2022. The Plaintiff resides at Uran town whereas the deceased resided at Avare village. The Plaintiff contends that although his other brothers knew about her demise, they failed to convey this information to him in a timely manner. He also encountered administrative hardships and delays in obtaining the formal death certificate of Defendant No. 45. Consequently, there is an unintentional delay of about 3 years in filing the substitution application. The Plaintiff has listed five legal heirs of Defendant No. 45 in Exhibit 66: (45/1) Shri Rupam Namdeo Gawand, (45/2) Shri Dhananjay Namdeo Gawand, (45/3) Smt. Nikita Deepak Mungaji, (45/4) Shri Nandkumar Namdeo Gawand, and (45/5) Smt. Nilima Kundan Mhatre. Similarly, Defendant No. 9, Smt. Urmila Sambhaji Thakur alias Pranali Pravin Khandagale, passed away on 11/05/2024 at her matrimonial residence in Kharghar, Navi Mumbai. Due to the geographical distance and communication gap, the Plaintiff was unaware of her demise, leading to an unintentional delay of approximately 19 months. The Plaintiff has proposed her two legal heirs in Exhibit 76: (9/1) Shri Pratik Pravin Khandagale and (9/2) Shri Pragyan Pravin Khandagale. The Plaintiff asserts that unless these applications are allowed, he will face irreparable loss.

3. The contesting Defendants filed their reply strongly objecting to all six applications.

4. This is a suit for declaration and partition of joint family properties. In a suit for partition, all co-sharers and necessary parties must be before the court to enable an effective and final adjudication. If any necessary party is left out, no legally binding final decree can be passed. Smt. Nirmala Namdeo Gawand (Defendant No. 45) and Smt. Urmila Sambhaji Thakur alias Pranali Pravin Khandagale (Defendant No. 9) are admittedly co-sharers and necessary parties to this suit. Under Order XXII Rule 4 of the CPC, an application to substitute legal heirs must be filed within 90 days of death, failing which the suit abates against the deceased under Rule 9. However, Section 5 of the Limitation Act allows the court to condone the delay upon the showing of 'sufficient cause'. The Hon'ble Supreme Court of India, in the landmark case of '**Collector, Land Acquisition, Anantnag vs. Mst. Katiji**', 1987 (2) SCR 387, held that courts must adopt a liberal and justice-oriented approach in condoning delay so as to advance substantial justice. Similarly, in '**Mithailal Dalsangar Singh vs. Annabai Devram Kini**', 2003 (10) SCC 691, the Hon'ble Supreme Court observed that rules of procedure are handmaids of justice and a hyper-technical view should be avoided when deciding substitution and abatement applications, particularly when the nature of the suit requires adjudication on merits. In this case, the Plaintiff is an elderly agriculturist of 66 years. His explanation regarding late knowledge due to residential distance (Uran to Avare and Kharghar) and delay in obtaining certificates is realistic and acceptable in the context of Indian family dynamics. There is no evidence of deliberate delay or malafides. Refusing substitution would result in the technical

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dismissal of a partition suit, leading to a miscarriage of justice. On the other hand, any prejudice and inconvenience caused to the Defendants can be mitigated by imposing reasonable costs. Hence, balancing the equities, the applications deserve to be allowed. Hence, I proceed to pass following order;

ORDER

- (I) The applications below Exhibit 68 and Exhibit 74 are hereby allowed, subject to the Plaintiff paying costs of Rs. 1,000/- (Rupees One Thousand Only) to the contesting Defendants for each application (total Rs. 2,000/-) within 14 days from today.
- (ii) The applications below Exhibit 70 and Exhibit 72 are hereby allowed, and the respective abatements are set aside.
- (iii) The applications below Exhibit 66 and Exhibit 76 are hereby allowed.
- (iv) The Plaintiff is directed to carry out the necessary amendments in the cause title of the plaint to bring the legal heirs of deceased Defendant No. 45 (as detailed in Exh. 66) and deceased Defendant No. 9 (as detailed in Exh. 76) on record within 14 days from today.
- (v) Issue summons/notice to the newly added defendants after the amendments are carried out.

Uran,
Date : 10.06.2026

(S. P. Wankhade)
Civil Judge, J.D., Uran