

-: Regular Civil Suit No.31 of 2010. :-

-: Order below Exh.141 :-

Perused application. Heard learned Adv.Shri. G.G. Tankkar for the plaintiff. The plaintiff filed this application for seeking liberty to bring on record legal representatives of deceased defendants.

2. It is contended by the plaintiff that defendant No.3 Vishnu Gurunath Khanolkar died on 19/1/2014 at Mumbai. Proposed L.R. No.3-A is the widow and proposed L.R. No.3-B is the daughter of deceased defendant No.3 as his legal representatives. But delay of 3 years 7 months from the date of death of defendant No.3 is caused to bring them on record as his legal representatives. Therefore, the suit is abated against them. By filing this application, the plaintiff prayed that the delay caused to bring legal representatives of deceased defendant No.3 be condoned and abatement order passed be set aside and sought permission to bring the legal representatives of deceased defendant No.3 on record.

3. It is further contended by the plaintiff that defendant No.5 Vijay Gurunath Khanolkar is also died on 26/4/2016 and proposed L.R. No.5-A is the widow and proposed L.R. No.5-B, 5-C are sons of deceased defendant No.5 as his legal representatives. But delay of 1 year, 3 months & 11 days from the date of death of defendant No.5 is caused to bring them on record as his legal representatives. Therefore, the suit is abated against them. By filing this application, the plaintiff prayed that the delay caused to bring legal representatives of deceased defendant No.5 be condoned and abatement order passed be set aside and sought permission to bring the legal representatives of deceased defendant No.5 on record.

4. It is further contended by the plaintiff that defendant No.26 Jayashri Shrihari Walavalkar is also died on 23/1/2017 and proposed L.Rs. No.26-A, 26-C, 26-D, 26-E are the daughters and proposed L.Rs. No.26-B is the son of deceased defendant No.26 as her legal representatives. But delay of 6 months and 22 days from the date of death of defendant No.26 is

caused to bring them on record as her legal representatives. Therefore, the suit is abated against them. By filing this application, the plaintiff prayed that the delay caused to bring legal representatives of deceased defendant No.26 be condoned and abatement order passed be set aside and sought permission to bring the legal representatives of deceased defendant No.26 on record.

5. On perusal of the plaint it reveals that plaintiffs filed the present suit against the defendants for partition and separate possession. The deceased defendants were necessary party to the suit. Their right to sue is therefore survives.

6. Admittedly, the legal representatives of deceased defendants No.3,5 and 26 are not brought on record within prescribed period. However, their right to sue survives. The plaintiff's suit is for partition. The proposed L.Rs. of deceased defendants No.3,5 and 26 are the necessary parties to the suit. If, the permission is not granted to the plaintiff for bringing them on record, the suit should be failed.

7. Considering the reason stated in the application by plaintiff for condonation of delay and setting aside abatement order, it would be just and proper to condone the delay and needs to set aside abatement order. In order to enable the court effectively and completely adjudication upon and settle, all the questions involved in the suit, it is necessary to allow the application to bring on record the legal representatives of deceased defendants No.3, 5 and 26. If the legal representatives of deceased defendants No.3, 5 and 26 are brought on record, no harm will be caused to the defendants. However, the delay caused by the plaintiff shall not be brushed aside. Due to the conduct of the plaintiff the valuable time of the court machinery is wasted. Therefore, while allowing this application it will just and proper to impose reasonable cost on the plaintiff. In the result, I pass the following order.

-: ORDER :-

01. Application Exh. 141 is hereby allowed subject to cost of Rs.500/-.
02. The delay caused for bringing on record legal representatives of deceased defendants No.3,5 & 26 is hereby condoned.
03. The abatement order passed against defendants No.3,5 & 26 is set aside.
04. The plaintiff is allowed to bring on record the legal representatives of defendants No.3,5 & 26 after depositing cost of Rs.500/- in the Court.
05. Cost amount be credited to the Government.
06. The plaintiff is directed to carry out amendment accordingly within 2 weeks and to file amended plaint on record.

Date :- 21/12/2017.

(Sadanand Patil)
Civil Judge, (J.D.), Dodamarg.
Deputation at Vengurla.