

ORDER BELOW EXH. 108 and 109 IN RCS no. 40 of 2013

These are applications on behalf of the Plaintiff for condonation of delay and setting aside the abatement to bring on record the legal representatives of the deceased Defendant no. 12. It is submitted on behalf of the Plaintiff that said Defendant no. 12 died on 07.10.2016. The instant suit is filed for declaration and partition. Therefore it is necessary that the heirs of said Defendant be impleaded as legal representatives. As he could not gather the death certificate and the addresses of the heirs of said Defendant he failed to bring on record the legal representatives of said Defendant in time. He was not having any ulterior motive behind that. Hence he has prayed to allow those applications.

2. On the other hand the Defendant no. 2 to 5 have filed their say at Ex. 113 and submitted that the reasons mentioned by the Plaintiff are not proper. It was necessary that Plaintiff ought to have made application within limitation. The delay is not properly explained. The suit is already abated against said deceased Defendant. Hence he has prayed to reject the applications.

3. Heard both sides. It is apparent that the suit is for declaration and partition. Therefore when a party has died, his share or right in the property would devolve on his heirs. Therefore the right to sue survives. In that background there is no abatement as per Order 22 Rule 1. Hence it is necessary that the legal representatives of the said deceased Defendant no. 12 as mentioned in the application by Plaintiff be impleaded as party to the proceedings. The delay now caused is only for 2 months and it is negligible considering the peculiar facts and circumstances of case it can be compensated by costs. Thus I pass the following order:-

- i. The applications are allowed on payment of costs of Rs. 100 to state.
- ii. The heirs of the deceased Defendant no. 12 as mentioned in the application be impleaded as party to the proceedings.

Dated: - June 15, 2017

Sd/-

Civil Judge Junior Division, Vengurla