

**COMMON ORDER BELOW EXHS. 126, 128, 136 IN REGULAR
CIVIL SUIT NO. 365/2000**

(Raghunath Chavan & ors. V/s. Bhimrao Kamble & ors.)

1. These applications are filed on behalf of plaintiffs in which they have contended that, plaintiff No. 1 Raghunath Nana Chavan died on 11/01/2012 and plaintiff No. 10 Abaji Sambhaji Chavan died on 11/06/2012. After their death their legal representatives needs to be brought on record. Hence, they have requested to set aside abatement order vide their application Exh. 136. They have requested to condone delay caused in filing present application vide Exh. 126 and they have requested to permit to bring the legal representatives of deceased plaintiff No. 1 Raghunath Nana Chavan and plaintiff No. 10 Abaji Sambhaji Chavan on record vide Exh. 128.

2. Say of defendants has been called. However, defendants choose not to file Say. Hence, all these applications are heard without Say of defendants.

3. Heard learned advocate for plaintiffs. They requested to allow these applications.

4. As per provisions of Order 22 of the Code of Civil Procedure, if any party to the litigation die during pendency of that matter and if right to sue or to be sued survives, legal representatives of deceased party are required to be brought on record. As per provision of Order 22 Rule 4 of the Code of Civil Procedure there is a provision which permits to consider the

application filed even after limitation in case of death of defendant. However, that order do not prescribe the consequences in case of death of plaintiff. Under these circumstances mute question arises whether such applications under consideration can be taken into account in case of death of plaintiff. In this regard learned advocate for plaintiff kept his reliance on the judgment of Jhabbu Lal V/s. Purroo & ors. reported in AIR 2007 Madhya Pradesh 223 and Committee of Management, Rama Devi Balika Inter College, Allahabad V/s. Mohd. Iqbal Khan & ors. reported in AIR 2006 Allahabad 163. In the judgment at Serial No. 1 mentioned supra, Hon'ble High Court held that, application for substitution of legal representatives of plaintiff can be considered even after expiry of 90 days, even though there is no prayer about setting aside abatement. Thus, the ratio laid down in above said judgment makes it clear that application for condonation of delay, for setting aside abatement order can be considered even after period of limitation. In this light perusal of contention of plaintiffs shows that there is a delay of nearabout one year. However, considering the nature of suit which is filed for partition and separate possession of suit property, it appears that right to sue of plaintiffs survives. Therefore, legal representatives of deceased plaintiff No. 1 Raghunath Nana Chavan and deceased plaintiff No. 10 Abaji Sambhaji Chavan are required to be brought on record. But as mentioned earlier there is inordinate delay in filing these applications, plaintiffs are liable to pay some costs to the defendants. In the result of all above discussion following order is passed.

ORDER

- (1) Applications at Exhs. 126, 128, 136 are allowed.
- (2) Plaintiffs to make payment of costs of Rs. 700/- (Rs. Seven hundred only). Payment of costs is condition precedent for further proceeding vide provisions of section 3 of the Code of Civil Procedure.
- (3) Delay caused in filing these applications is condoned.
- (4) Abatement order is set aside and plaintiffs are permitted to bring legal representatives of deceased plaintiff No. 1 Raghunath Nana Chavan and plaintiff No. 10 Abaji Sambhaji Chavan as mentioned in application vide Exh. 136.
- (5) Plaintiffs to carry out necessary amendment within prescribed period and place a copy of amended plaint on record.

Islampur
Date :- 22/01/2014

Sd/-xxx
(Sahas P. Bhosale)
VI Joint Civil Judge, Junior Division,
Islampur