

**ORDER BELOW EXH. 115 IN R.C.S. NO. 33/2021**

1. This is an application to condone the delay caused in bringing the legal representatives of deceased defendant No. 3 Bhimrao Baburao Shinde, defendant No. 7 Subhash Pandurang Patil and defendant No. 9 Sajakka Bhimrao Mali. Plaintiff contended that, defendant No. 3 expired on 17/12/2022, defendant No. 7 expired on 18/07/2022 and defendant No. 9 expired on 07/08/2022. However, he could not collect the relevant documents in time and due to which delay is caused. Hence, he requested to condone the delay. Say of defendants is called for. Defendants have contested the application on the ground that false reasons are assigned. Lastly prayed to reject the application.

2. Defendant No. 3 is reported to be died on 17/12/2022, defendant No. 7 is reported to be died on 18/07/2022 and defendant No. 9 is reported to be died on 07/08/2022, as such, plaintiff ought to have file the application for bringing the legal representatives within stipulated period. Present application is moved on 18/12/2023. That means there is considerable delay in moving the application. This is a suit for partition and separate possession of the suit properties. Upon perusal of genealogy it reveals that plaintiff and defendants are relatives inter se. Plaintiff has claimed declaration that sale deed in question is not binding on his right. Thus, substantial rights of the parties are involved. After the death of these defendants, right to sue survives. Considering the nature of controversy, the request of plaintiffs

needs to be considered on certain costs. Accordingly, following order is passed.

**ORDER**

- (1) Application is allowed on following terms :-
  - (A) Delay for bringing the legal representatives of defendant No. 3 is condoned subject to costs of Rs. 500/- (Rs. Five hundred only) to be paid to Taluka Legal Services Authority, Walwa-Islampur on or before next date.
  - (B) Delay for bringing the legal representatives of defendant No. 7 is condoned subject to costs of Rs. 500/- (Rs. Five hundred only) to be paid to Taluka Legal Services Authority, Walwa-Islampur on or before next date.
  - (C) Delay for bringing the legal representatives of defendant No. 9 is condoned subject to costs of Rs. 500/- (Rs. Five hundred only) to be paid to Taluka Legal Services Authority, Walwa-Islampur on or before next date.
- (2) On depositing the costs as aforesaid, delay for bringing the legal representatives of defendant Nos. 3,7 and 9 be condoned.
- (3) Non-compliance of the order as directed shall render it *non est*.

Islampur  
Date : 21/12/2023

(M.M. Chitale)  
Joint Civil Judge Senior Division,  
Islampur

**ORDER BELOW EXH. 117 IN R.C.S. NO. 33/2021**

1. This application is filed for setting aside abatement in respect of deceased defendant No. 3 Bhimrao Baburao Shinde, defendant No. 7 Subhash Pandurang Patil and defendant No. 9 Sajakka Bhimrao Mali.

2. It is contention of plaintiff that, defendant No. 3 expired on 17/12/2022, defendant No. 7 expired on 18/07/2022 and defendant No. 9 expired on 07/08/2022. However, he could not collect the relevant documents in time and hence delay has been caused in bringing the legal representatives of deceased on record. The legal representatives of deceased are necessary parties to adjudicate the suit on merits. Hence, plaintiff has prayed to allow the application. Defendants have contested the application on the ground that false reasons are assigned. Lastly prayed to reject the application. Alternatively prayed to impose cost of Rs. 2000/- each.

3. Admittedly, plaintiff has not brought the legal representatives of deceased defendant Nos. 3, 7 and 9 within statutory period. There is no documentary evidence on record to corroborate the cause of delay occurred at the hands of plaintiff. However, considering the fact that in the present suit the rights of present plaintiff and deceased defendants are going to be adjudicated, the right to be sue survives with the legal representatives of deceased defendant Nos. 3,7 and 9. Hence, in view of above circumstances I find that abatement requires to be condoned. Accordingly I pass following order.

**ORDER**

- (1) Application is allowed on following terms :-
- (A) The abatement order against defendant No. 3 is set aside subject to costs of Rs. 500/- (Rs. Five hundred only) to be paid to Taluka Legal Services Authority, Walwa-Islampur on or before next date.
- (B) The abatement order against defendant No. 7 is set aside subject to costs of Rs. 500/- (Rs. Five hundred only) to be paid to Taluka Legal Services Authority, Walwa-Islampur on or before next date.
- (C) The abatement order against defendant No. 9 is set aside subject to costs of Rs. 500/- (Rs. Five hundred only) to be paid to Taluka Legal Services Authority, Walwa-Islampur on or before next date.
- (2) After depositing the costs amount, the abatement order against deceased defendant Nos. 3, 7 and 9 is set aside.
- (3) Non-compliance of the order as directed shall render it *non est*.

Islampur  
Date : 21/12/2023

(M.M. Chitale)  
Joint Civil Judge Senior Division,  
Islampur

**ORDER BELOW EXH. 119 IN R.C.S. NO. 33/2021**

1. This application is filed to bring the legal representatives of deceased defendant Nos. 3,7 and 9 on record. It is contention of plaintiff that, defendant No. 3 expired on 17/12/2022, defendant No. 7 expired on 18/07/2022 and defendant No. 9 expired on 07/08/2022 and their legal representatives are required to be brought on record. Accordingly plaintiff has prayed to allow the application. Defendants have contested the application and prayed to reject the application.

2. Admittedly plaintiff has not brought the legal representatives within statutory period, moreover, the reason assigned is also not satisfactory. However, if the nature of the suit is considered, then, as in the present suit the rights of present plaintiffs and deceased defendant are going to be adjudicated, the right to be sue survives with the legal representatives of deceased defendant Nos. 3,7 and 9. Hence, in view of above circumstances I find that it is necessary to bring legal representatives of deceased defendant Nos. 3,7 and 9 on record. Accordingly I pass following order.

**ORDER**

- (1) Application is allowed.
- (2) The legal representatives of deceased defendant Nos. 3,7 and 9 be brought on record.

Islampur  
Date : 21/12/2023

(M.M. Chitale)  
Joint Civil Judge Senior Division,  
Islampur