

REGULAR CIVIL SUIT NO.10/2015
[Common Order Passed Below Exh.39, 40 & 41]
[Smt. Vaishali Sunil Hingmire etc.3 v/s. Guruling Virupaksh Hingmire etc.35]

Applications at Exh.40, 39 and 41 are filed by the plaintiffs for bringing on record the legal representatives of the deceased defendant Nos.33, 34 and 35 after condoning the delay and setting aside automatic order of abatement.

2] By filing say at the overleaf of these applications, the defendant Nos.1 to 3 prayed to reject these applications. No say filed by other defendants.

3] It is contended by the plaintiffs that they got knowledge about the death of defendant Nos.33 and 34 after receiving the bailiff report, as the plaintiffs are residing at Atpadi, Tal. Atpadi, Dist. Sangli and deceased defendants resided at Rajapur, Tal. Tasgaon. Therefore, delay is caused for obtaining the information about the legal heirs and death certificates, for filing this application.

4] Read the applications and say. Heard both sides. On perusal of death extract at Exh.46 and 47, the defendant No.33 is died on 3.7.2007 and the defendant No.34 is died on 27.6.2005. Plaintiffs have filed their affidavits in support of their contentions. This suit is filed for partition and perpetual injunction. The defendant Nos.33 and 34 were co-sharers in the suit properties. After their death, presence of their legal representatives in the matter is necessary for just decision of the suit.

5] On perusal of record, it reveals that the reasons stated by the plaintiffs for delay in bringing the legal representatives on record, are proper one. Further, plaintiffs did not produce any document in respect of death of defendant No.35. So, considering these facts and in the interest of justice and to decide the matter on merit, opportunity should be given to the plaintiffs to bring the legal heirs on record and even to the legal heirs of the deceased defendants to put up their defence. Therefore, the delay needs to be condoned and the plaintiffs are permitted to bring the legal representatives of the deceased defendant Nos.33 and 34 and also amend the plaint accordingly. Hence, the applications at Exh.39, 40 and 41 deserve to be partly allowed. In the result, the following order is passed :-

: ORDER :

1. Applications at Exh.39, 40 and 41 are hereby partly allowed.
2. The delay of one year caused for bringing legal representatives of the deceased defendant Nos.33 and 34 on record is hereby condoned subject to costs of Rs.300/- to be paid to Legal Aid.
3. The order of abatement stands set aside.
4. The plaintiffs are permitted to bring legal representatives of the deceased defendant Nos.33 and 34 on record and amend the plaint accordingly.
5. Plaintiffs prayer to delete the name of defendant No.35 stands rejected.

Tasgaon
Dt.12.01.2017

(Smt. S.S. Manjrekar)
2nd Jt. Civil Judge, Junior Division,
Tasgaon