

ORDER BELOW EXH.51

This is an application filed by the applicants for bringing them on record as legal heirs of deceased plaintiff i.e. Uttam Laxman Ghodake.

2. Shri.Jadav, Advocate for the applicants submitted that sole plaintiff Uttam Laxman Ghodake was died on 26.04.2013. He further submitted that, Misc.Application No.20 /2012 preferred by defendant was on record and in that proceeding legal heirs of deceased plaintiff were brought on record. Therefore, according to Shri.Jadhav, it is not necessary to set aside abatement order because in view of order passed in Civil Misc. Application No.20/2012., present suit is restored on record. Hence, Shri.Jadhav submitted that, without imposing any cost, present application be allowed in the interest of justice.

3. Shri.Shah, Advocate for the defendants submitted that there is delay in preferring this application. Applicants have not given any explanation for said delay. Therefore, application is not tenable in the eyes of law. Hence, Shri.Shah submitted that, application be rejected. It is further submission of Shri.Shah that, if application is allowed cost may be imposed on the applicants.

4. Admittedly sole plaintiff was died on 26.04.2013. However, at that time Civil Misc.Application bearing no.20/2012 filed by the defendant for setting aside exparte decree was pending before the court. It is a matter of record that, legal heirs of deceased Uttam Laxman Ghodake were brought on record in said Civil Misc. Application. Said application was decided on 09.07.2015, thereby Reg.Civil .Suit No.57/2008 is restored on board. It is a matter of record that, while passing order in above Civil Misc.Application, no date is fixed for appearance of parties.

Record and proceeding of Reg.Civil Suit No.57 / 2008 actually taken on board on 15.10.2015 and summons were issued to all parties. Applicants appeared in the proceeding on 06.11.2015 and on the same day, they filed present application for bringing them on record as legal heirs of deceased Uttam Ghodake.

5. It is settled position of law that on death of sole plaintiff, if his legal heirs were not brought record within the time permitted by the law, the suit automatically stands abated. On perusal of present application, it reveals that applicants have not prayed for setting aside the abatement order. However in my considered opinion, legal rights of applicants can not be denied merely on the ground that applicants have not prayed for setting the order of abatement. On perusal of application, it appears that intention of the applicants is to bring them on record as legal heirs of deceased plaintiff. Hence I am of the opinion that even-though applicants have not prayed for setting aside abatement order, it can be gathered from the application itself & same is deemed to have been included in the application.

6. If the present application is rejected only on the ground that applicants have not prayed for setting aside order of abatement, then it will amount to deciding the applications on hyper technical grounds. Such course will be definitely results miscarriage of justice on the part of applicants as they will not get fair opportunity. On the other hand, if application is allowed, no harm would be caused to the defendants. Again it will be helpful to adjudicate the matters on merits. Considering above facts and circumstances on record, as applicants on the day of appearance have filed present application, it is not justified to impose any cost on them. Hence, I proceed to pass the following order.

ORDER

1. Application is allowed and 'deemed abatement' order stands set aside.

2. Applicants are directed to amend the plaint as per law & furnish amended copies of plaint.

Date : 18.01.2016

(G.S.Diwan)
Jt. Civil Judge Jr. Dn.,
Akkalkot

CERTIFICATE

I affirm that the contents of this PDF file Order /Judgment are same word to word, as per the original Order /Judgment.

Name of Stenographer : R.M.Shirke
Court : Jt.Civil Judge & Judicial
Magistrate F.C., Akkalkot.
Date : 18/01/2016
Judgment /order signed by
the Presiding Officer on : 18/01/2016
Judgment / order uploaded
on : 18/01/2016