

COMMON ORDER BELOW EXH. 49 and 53 IN R.C.S. NO. 13/2019.

(SIDDHALING PATIL v. VATSALABAI PATIL AND OTHERS.)

CNR-MHSO15-000494-2019

The plaintiff has filed application (Exh.49) for setting aside abatement order passed against defendant No.8. He has also filed on record application (Exh.53) for condonation of delay caused in filing application (Exh.55) for bringing on record legal heirs of deceased defendant No.8. He has further filed on record application (Exh.55) for bringing on record legal heirs of deceased defendant No.8.

02. Defendant Nos.1 to 5 and 7 have strongly resisted applications (Exh.49 and 53) by filing say thereon. Defendant Nos.6 and 9 failed to file their say on applications (Exh.49 and 53). Hence, applications (Exh.49 and 53) are hereby decided without say of defendant Nos.6 and 9.

03. Heard learned advocates for the plaintiff and defendant Nos.1 to 5 and 7, at length. Learned advocate for the plaintiff has vehemently argued that, defendant No.8 died on 04.06.2021. However, the plaintiff was not aware about death of defendant No.8. Moreover, due to epidemic Covid-19 and illness of the plaintiff, he could not bring on record legal heirs of defendant No.8 within stipulated period of time. Thus, there was a sufficient cause for the plaintiff for not filing the application (Exh.55) for bringing on record legal heirs of deceased defendant No.8 within period of limitation. He further argued that, no prejudice would be caused to other parties by allowing applications (Exh.49 and 53). On the contrary, in order to decide the controversy between the parties, it is necessary to bring on record legal heirs of deceased defendant No.8. Therefore, he prayed that, abatement order passed against defendant No.8 may be set aside. He further prayed that, delay caused in filing application (Exh.55) for bringing on record legal heirs of deceased defendant No.8 may be condoned. Therefore, he prayed that, applications (Exh.49 and 53) may be allowed.

04. Learned advocate for defendant Nos.1 to 5 and 7 argued that, the plaintiff is nephew of deceased defendant No.8. The plaintiff and defendant No.8 were residing in the same village. Hence, the plaintiff was having knowledge of death of defendant No.8. However, the plaintiff failed to bring on record legal heirs of defendant No.8 within period of limitation. The plaintiff has filed applications (Exh.49 and 53) after considerable lapse of time. Therefore, he prayed that, applications (Exh.49 and 53) may be rejected.

05. On perusal of record and proceeding, it appears that, defendant No.8 has died on 04.06.2021. The plaintiff should have brought on record legal heirs of deceased defendant No.8 within stipulated period of time. However, the plaintiff failed to do so. Hence, the suit came to be abated against defendant No.8 as per law. Thereafter, on 22.02.2022 the plaintiff has filed applications (Exh.49 and 53). Considering reasons mentioned in applications (Exh.49 and 53) and submission of learned advocate for the plaintiff, it shows that, the plaintiff was unaware of death of defendant No.8 and therefore, he could not bring on record legal heirs of deceased defendant No.8 within period of limitation. The plaintiff has further contended that, due to epidemic Covid-19 and his illness, he could not bring on record legal heirs of defendant No.8 within stipulated period of time. There is nothing on record which indicate that, delay caused by the plaintiff in bringing on record legal heirs of defendant No.8 is deliberate. Hence, considering contentions and submissions of both parties as well as considering the nature of the suit and controversy between both parties, I am of the considered opinion that, there was a sufficient cause for the plaintiff for not making the application (Exh.55) for bringing on record legal heirs of deceased defendant No.8 within period of limitation. Apart from this, the suit has to be decided on merit and for that purpose, it is necessary to bring on record legal heirs of deceased defendant No.8. Furthermore, by allowing applications (Exh.49 and 53), no

prejudice will be caused to other parties. Moreover, delay caused by the plaintiff in filing applications (Exh.49 and 53) can be compensated by imposing cost upon him. Therefore, considering above facts and circumstances, it is just and proper to allow applications (Exh.49 and 53) subject to cost. Considering age of the suit and delay caused by the plaintiff, it is just and proper to impose total cost of Rs.500/- on the plaintiff while allowing those applications. Resultantly, I pass following order :-

:: ORDER ::

1. Applications (Exh.49 and 53) are hereby allowed subject to total costs of Rs. 500/- (Rupees Five Hundred Only) payable to defendant Nos.1 to 5 and 7.
2. Abatement order passed against deceased defendant No.8 is hereby set aside.
3. Payment of cost shall be condition precedent for setting aside abatement order passed against defendant No.8.
4. Delay caused in bringing on record legal heirs of deceased defendant No.8 is hereby condoned.
5. Payment of cost shall be condition precedent for condonation of delay caused in bringing on record legal heirs of deceased defendant No.8.
6. Accordingly, applications (Exh.49 and 53) are hereby disposed of.

(Dictated and pronounced in the Open Court).

Date: 14.06.2022.

(Balasaheb S. Gaikwad)
Civil Judge, Junior Division,
Akkalkot.

C E R T I F I C A T E

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

Name of the Stenographer	: Mrs. A.S.Magnur (Grade-III).
Court	: C.J.J.D and Judicial Magistrate First Class, Akkalkot.
Judgment / Order signed by P. O. on	: 14.06.2022.
Judgment / Order uploaded on	: 14.06.2022.