

**Spl.C.S. No.128/2022**  
**Ramchandra & Ors.**  
**Vs. Ganesh & Ors.**

**ORDER BELOW EXH.35.**

Read an application and the reply filed by plaintiffs. Perused the record. Heard the learned counsel for plaintiffs Adv. Shri. V.V. Methawade and the learned counsel for defendant no. 2 to 5 Adv. Shri. V.A. Patil.

2. Defendant no. 2 to 5 filed this instant application and submitted that, the suit summons served to them and thereafter they appeared, but they have not filed written statement within the period of limitation on the ground that the required documents are not available in their hand. Now, they want to file written statement and therefore, prayed to set aside no written statement order and to grant to permission to file the written statement.

3. On the contrary, plaintiffs opposed to this application on the ground that, defendant no. 2 to 5 have not filed written statement deliberately within the time. The reason mentioned in the application is false and therefore, they prayed to reject the application.

4. On perusal of record, it appears that the suit summons served to defendant no. 2 to 5 by registered post. The defendant no. 2 to 5 appeared on 25.11.2022 through their counsel as per the Vakalatnama at Exh. 23. The acknowledgment attached with the record shows that, suit

summons served to them on 24.11.2022. The defendant no. 2 to 5 was required to file the written statement within 30 days from the date of service of summons i.e. upto 24.12.2022. The defendant no. 2 to 5 filed this application on 10.03.2023. Therefore, it appears that, there is near about more than two months delay to file written statement. The reasons mentioned in this application is not justified. However, it is necessary to grant an opportunity to file the written statement and to contest this suit. Accordingly, I proceed to pass the following order,

**ORDER**

1. The application is allowed.
2. No written statement order against defendant no. 2 to 5 has not been passed till today. Hence, no such order.
3. The defendant no. 2 to 5 are permitted to file the written statement till next date.
4. Both the parties to take note of it.

Vaduj  
Date: 23.06.2023

(D.D. Fulzele)  
Civil Judge, Sr. Dn., Vaduj.

**R.C.S. No.11/2019**  
**Sonubai(deceased) through**  
**LR's Vs. Gramseva Mandal & Ors.**

**ORDER BELOW EXH.29.**

Read an application and the reply filed by the plaintiff. Perused the record. Heard the learned counsel for the plaintiff Adv.Shri. Akbar Shekh. The defendant no. 10 and his learned counsel i.e. the Assistant Government Pleader is absent when called.

2. The defendant no. 10 filed this instant application and submitted that the suit summons served to defendant No.10 on 03.01.2023. The suit was fixed for the appearance of defendants on 04.01.2023. However, the defendant no. 10 being the Assistant Charity Commissioner, Satara was engaged in their work and the additional charge was also kept and therefore the defendant no. 10 could not appear within a time. Now the defendant no. 10 want to appear and to file the written statement. Therefore, the defendant no. 10 prayed to set aside ex-parte order and to grant permission to file the written statement.

3. On the contrary, plaintiff opposed to this application on the ground that, the defendant no. 10 deliberately has not appeared within the time, the reason mentioned in the application is not justified. Therefore, plaintiffs prayed to reject the application.

4. On perusal of record, it appears that, the suit summons served to defendant no. 10 on 03.01.2023 vide bailiff report at Exh. 11. The suit was fixed for the appearance of defendant no. 10 on 04.01.2023. The defendant no. 10 filed this instant application on 06.05.2023. The defendant no. 10 was required to file written statement within 30 days from the date of service summons i.e. upto 03.02.2023. There is near about more than 3 months delay to file the written statement. However, it appears that, there is no much delay to file the written statement. Accordingly, I proceed to pass the following order,

**ORDER**

1. The application is allowed.
2. Ex-parte order against defendant 10 dated 08.02.2023 is set aside and the defendant no. 10 is permitted to file the written statement till next date, otherwise this application shall automatically stands rejected.
3. Both the parties to take note of it.

Vaduj  
Date: 21.06.2023

(D.D. Fulzele)  
Civil Judge, Sr. Dn., Vaduj

**Order below Exh. 35**

**5**

**Spl. C.S.No. 128/2022**

**R.C.S. No.11/2019  
Sonubai(deceased) through  
LR's Vs. Gramseva Mandal & Ors.**

**ORDER BELOW EXH.23.**

Read an application and the reply filed by defendant no. 2 and 4 to 9 at Exh. 31. Perused the record. Heard the learned counsel for the plaintiff Adv. Shri. Akbar Shekh and the learned counsel for the defendant no. 2 and 4 to 9 Adv. Shri. J.M. Kazi.

2. The plaintiff filed this instant application and submitted that, the defendant no. 3 namely Shivaji Maruit Jadhav died as per the bailiff report. However, the defendant no. 3 was added as defendant no. 3, as he was the trustee of Gramseva-manal. Therefore, the legal heirs of defendant no. 3 is not required to be added as party and therefore prayed to delete the name of defendant no.3.

3. On the contrary, defendant no. 2 and 4 to 9 opposed to this application on the ground that plaintiffs brought the legal heirs of Sonubai Tatyrao Jadhav after her demise. She was also trustee of the trust property. However, plaintiffs filed this application to delete the name of defendant no.3 without bringing her legal heirs on record and therefore, plaintiff is not entitled to delete the name of defendant no. 3. Hence, they prayed to reject the application.

On perusal of record, it appears that, the plaintiff claimed for the relief of ownership by adverse possession.

According to the plaintiff, the plaintiff was possessor of the suit property. The suit property was purchased by the husband of plaintiff by the means of stridhan of the plaintiff. The defendant no. 3 is only trustee of the suit property and therefore, the legal heirs of defendant no.3 is not required to be taken on record as they can not inherit to the suit property because of trustee of defendant no.3.

In view of this I read Rule 10 of Order I of the Code of Civil Procedure. Rule 10(1) clause(2) of Order I provides that, the Court may at any stage of the proceeding, either upon or without the application of either parties and on such terms as may appear to the Court to be just, order that the name of any property in properly joined, whether as plaintiff or defendant, be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

In this present suit, it is the contention of the plaintiff that the plaintiff is the possessor of the suit property since long. The plaintiff claimed the ownership by way of adverse possession. The defendant no. 3 alongwith other defendants are trustee of Gramseva-mandal. Therefore, the legal heirs of the defendant no. 3 may come before the Court and claim to add them as party. However, the plaintiff do not want to add legal heirs of the deceased defendant no. 3 as of defendant. On the basis that they can

not inherit the suit property by way of trustee.

Under this circumstances, in my opinion, the legal heirs of deceased defendant no. 3 may approach before the Court and they may claim to add them as party to the suit. The plaintiff is not claiming any relief against the deceased defendant no. 3. Under this circumstance, it is necessary to delete the name of deceased no. 3 vide Rule 10 of Order I of the Code of Civil Procedure. I found substance in the application. Accordingly, I proceed to pass the following order,

**ORDER**

1. The application is allowed.
2. the name of defendant no.3 namely Shivaji Maruti Jadhav be deleted as of defendant no. 3 till next date otherwise this application automatically stands rejected.
3. Plaintiffs are further directed to correct the plaint and to file amended copy of the plaint.
4. Both the parties to take note of it.

Vaduj  
Date: 21.06.2023

(D.D. Fulzele)  
Civil Judge, Sr. Dn., Vaduj