

Common Order below Exh.40 and 41 in RCA No.69/2017**Bhagwan Kadu through LRs ..Vs.. Ganesh Kuttarmare through his LRs & Ors.****CNR No. MHWR010018202017**

1. The present applications have been filed for condonation of delay in bringing the legal representatives of appellant No.2 on record and for setting aside abatement against appellant No.2. The applications have been filed by the appellant No.4.

2. By the applications, it is contended that the appellant No.2 died on 18/02/2022. As the appellant No.4, who filed the present applications is in service of police department was not having knowledge regarding pending litigation and after receipt of knowledge filed the applications. There is delay of 2 years and 7 months for bringing the legal representatives on record and for setting aside abatement against appellant No.2.

3. In the application the appellant No.2 is mentioned as appellant No.1-B, but by the pursis filed below Exh.47 the counsel for the appellant made the things clear.

4. The proposed legal representatives appeared in the matter in response to the notices issued by this Court and given no objection to bring them on record.

5. The applications are strongly opposed by the respondent. The learned counsel Shri. P. M. Deshpande submitted that the appellant No.2 and appellant No.4 are brothers inter-se and therefore the reason assigned for causing the delay cannot be accepted.

6. The matter before the learned Trial Court is for the removal of encroachment and for the recovery of possession filed by the original plaintiff Bhagwan Pandurangji Kadu. During the pendency of litigation the original plaintiff is died and his legal representatives including

appellant No.2 has been taken on record. There are other legal heirs of said Bhagwan Kadu, who are already on record. Considering the nature of the litigation and status of the parties though there is a delay for setting-aside abatement and bringing the legal representatives on record of deceased appellant No.2, in my view applications deserves to be allowed, but at the same time costs should be imposed for the delay. Hence, the following order.

ORDER

- 1] The applications below Exh.40 & 41 are allowed subject to cost of Rs.2000/-, which is to be paid in equal proportion to the legal representatives of original respondent No.1.
- 2] The delay caused for preferring the application to set-aside abatement and for bringing the legal representatives on record is hereby condoned.
- 3] Abatement against appellant No.2 is set-aside.

Date : 24/03/2025

(J. A. Pedgaonkar)
District Judge-5, Wardha.