

COMMON ORDER BELOW EXH. 22 AND 24 IN R.C.S. NO.11/2015

(Devidas Surybhan Bhade V/s. Vijay Shivmangal Dube & Anr.)

1. These are an applications moved by the plaintiff for condonation of delay and to implead legal heirs of deceased defendant No.2 i.e. Kasturachand Babulalji Jain. The plaintiff has contended that, the defendant No.2 has died on 26/09/2015, thereafter, pursis was moved by defendant on 01/09/2017 and at that time the plaintiff revealed that, the defendant no. 2 is no more. It is further contended that, the defendant no. 2 is not a relative of plaintiff, not residing in his village and so, plaintiff was not aware regarding his death. Plaintiff has further contended that, if the legal heirs are not impleaded then he will suffer irreparable loss. Hence, he prayed for condonation of delay and permission to bring the LR's on record.

2. The notice was issued to the proposed LR's. Record shows that, The LR's are duly served and out of them one has filed say below Exh. 38 and others have not appeared. It is contended that, defendant no. 2 has died during pendency of suit, pursis has filed on 1/09/2017 but still plaintiff has belatedly filed the applications without any sufficient cause. It is also contended that, the reason mentioned is improper. Further it is contended that, the plaintiff was supposed to show the sufficient cause for the delay and so, considering all above aspects prayed for rejection of application.

3. Perused the record. It reveals that, the present suit is for declaration and perpetual injunction. Further record shows that, the defendant No.2 Kasturchand has died on 26/09/2015, pursis below

Exh. 19 was moved on 04/08/2017. Further, record shows that, thereafter the plaintiff has moved present applications after the period of one year. From the record, it seems that, plaintiff want knowledge regarding the death on 04/08/2017 but still he has not filed the applications within stipulated period. Further, though there is a delay of one year plaintiff has not filed application seeking a prayer for setting aside abatement. The suit involves question regarding sale deed of immovable property. So, considering the reasons mentioned in the applications and considering the nature of the dispute I hold that, if the legal heirs of defendant No.2 are impleaded then there will be no prejudice to the legal heirs or other defendant. Further, the defendants can be very well compensated for the delay. So considering all above things, I proceed to pass the following order.

ORDER

1. Applications are allowed.
2. The delay caused to bring the LRs of defendant No.2 on record is hereby condoned subject to cost of Rs.500/- payable to defendants, the abatement order is hereby set aside.
3. The plaintiff is permitted to implead the proposed LRs as party defendant and to make necessary amendment and file the amended copies of plaint within stipulated period.

Karanja (Gha.)
Date:-17/01/2025

(V. S. Wagh)
Civil Judge, J.D. Karanja (Gha.)
Dist. Wardha