

COMMON ORDER BELOEW EXH. 35 and 41

From the contention of application and say filed by the defendant following points arises for my determination and I have recorded for my findings thereon for the reasons stated as under.

| Sr. No. | Points | Findings |
|---------|--|--------------------|
| 1 | Whether the application filed by the plaintiff at Exh.35 and 41 are liable to be allowed as prayed | Yes |
| 2 | What order ? | As per final order |

REASONS**As to point Nos. 1 and 2**

2. Read application supported by affidavit. Perused say filed by the defendants. Perused record. Heard.

3. The advocate for the plaintiff has submitted that, the plaintiff has filed this suit for declaration and permanent injunction. During the pendency of the suit plaintiff No.3 namely Rukhamabai Gyanuji Gawai expired on 14/01/2020. The plaintiffs have filed pursis regarding the death of plaintiff No.3 on 20/07/2019. Already plaintiff Nos. 1, 2 and 4 are the legal heirs of the deceased plaintiff No.3 as she is the mother of said plaintiffs. The advocate for the plaintiff has further submitted that, due to oversight and lack of knowledge of law and also the case was transfered from Washim Court to Mangrulpir Court, some legal heirs of plaintiff No.3

have not brought on record. The plaintiff has filed application for bringing the legal heirs of deceased plaintiff No.3 on 09/09/2019 below Exh.35. Alongwith the said application by oversight the plaintiff have not filed delay condonation application for condoning the delay in bringing legal heirs of the deceased plaintiff on record. Hence, prayed that the said delay of 9 years 4 month and 25 days may be condoned, and the plaintiff may be permitted to bring the legal heirs of deceased plaintiff No.3 on record.

4. On the other hand, the advocate for the defendant has raised objection to this application submitting that, the application filed by the plaintiff is not within stipulated time, hence he opposed to the application. He further submitted that, if the Court deems fit to allow this application then it may be allowed subject to cost.

5. After considering the submissions made on behalf of both the sides I have gone through the record, it seems from the record that, the plaintiffs have filed the suit for declaration and permanent injunction. After service of summons defendant No.1 appear and filed her written statement at Exh.14. My learned predecessor has framed issues on 04/08/2010 at Exh.15 and matter posted for evidence of the plaintiff. It also seems from the record that, the plaintiffs have filed application for injunction at Exh.5 which has been rejected by my learned predecessor by order dt.17/06/2009. It also seems from the record that, the plaintiffs have filed application for appointment of commission to inspect the suit site at Exh.20, which has also been rejected by my learned predecessor by order dt.17/08/2011. It further seems from the record that, the plaintiffs have filed application at Exh.35 for permission to bring the legal heirs of the plaintiff No.3 on record. By filing say on the said application the advocate for the defendant has raised

objection that, there is no application for condonation of delay. Hence, by filing application Exh.41 the advocate for the plaintiff has prayed for condonation of delay of 9 years 4 months and 25 days caused for bringing the legal heirs of deceased plaintiff No.3 on record. Though on behalf of defendants this application has been strongly resisted. However, considering the nature of the suit to decide the matter on merit by imposing some sort of cost upon the plaintiff if this application allowed no right of defendant will be prejudiced. Considering all the above discussion, this application deserve to be allowed. Hence, I answer point No.1 in the affirmative and in answer to point No.2 I pass the following order.

ORDER

1. The application filed by the plaintiff at Exh.35 and 41 allowed as prayed and the delay of 9 years 4 months 25 days caused for bringing the legal heirs of deceased plaintiff No.3 on record has been condoned and permission granted to bring the legal heirs of the plaintiff No.3 on record subject to cost of Rs.2000/- to be paid by the plaintiffs to defendants on or before next date.
2. By complying the above said condition, the plaintiffs to carry out necessary amendment in a plaint within stipulated time.
3. Cost in cause.

(Dictated and pronounced in open court.)

Dt. 05/11/2022

(S. J. Gaikwad)
Civil Judge Senior Division,
Mangrulpir.

Order dictated on : 05/11/2022
Order transcribed on : 07/11/2022
Order checked on : 07/11/2022
Order Retyped and signed on : 08/11/2022

CERTIFICATE

I affirm that the contents of this PDF file order are same word to word, as per original judgment.

- 1) Name of Stenographer :- R. K. Chavhan, Stenographer
- 2) Name of Court :- Civil Judge (S.D.), Mangrulpir.
- 3) Date :- 05/11/2022
- 4) Order signed by the presiding officer on :- 08/11/2022
- 5) Order uploaded on :- 08/11/2022