

COMMON ORDER BELOW EXH. 23 & 24 IN R.C.S.No. 46 OF 2018
(Gumfabai vrs. Gajanan)

1] The plaintiffs have moved this applications for delay condonation and setting aside abatement as well as bringing LR's of deceased defendant no.5 on record. The advocate of defendants filed their say and overleaf of applications.

2] Read applications and say, Heard the advocate for both sides.

3] As per applications the plaintiffs are old aged and residing at Buldhana district. The deceased defendant no.5 was residing at mouje Goundhala. Therefore, the information of death of defendant no.5 is received on 01/01/2024 thereafter they trying to obtain relating documents but in vain. He further averred that, the plaintiffs have knowledge in respect of LR's of deceased defendant no.5. Therefore, he prayed to condoned delay and permitted to him bring on record the LR's of deceased defendant no.5 mentioned in the Exh.24 on record.

4] The applications are opposed on ground that, there is no ground as such and if it is allowed then cost be imposed on plaintiffs.

5] In view of order 22 Rule 1 of code of Civil Procedure, if the right to sue survive on the death of defendant, then suit does not abate. In that case, if the defendant, died and right to sue survive. Rule 4 of that order came into operation. As per rule 4 an applications to bring legal heirs of the defendants on record will have to be made within 90 days of death. On expiry of the said 90 days,

the proceeding stand abated. Within 60 days of such abatement, an applications must be made to set aside the abatement.

6] Admittedly, plaintiffs out to have mention sufficient cause in order to condon the delay. The subejct matter involved in the present suit immovable properties and it is suit for partition and separate possession of suit property. It is also pleaded in plaint the defendant nos.5 to 7 are real brothers of plaintiff and defendant nos.1, 3 and 4 are the sons and daughter of brother of plaintiff namely deceased Dhondu Maval and defendant no.2 is wife of deceased Dhondu. The fact of relations not disputed by defendants in their written statement. The plaintiffs are intending to implead the L.R.'s of defendant no.5 mentioned in application at Exh.24 and proceed with the suit. The applications supported with affidavit. The death of deceased defendant no.5 is not challenged behalf other defendants. There is no reason to infer that, plaintiff's prayer is not genuine.

7] The right to sue survive against the legal representative of the deceased defendant no.5. There is no harm or injustice will be caused to the defendants. Considering the nature of suit the all persons interested in the suit property is necessary brought on record to decide suit on merits but, at the same time keeping in mind the delay caused to moving these applications is near about one and half to two years. Therefore, it is proper at time of allowing applications some cost on plaintiffs imposed. Hence, in view of above reasons, I pass following order :-

ORDER

1. The applications are allowed subject to cost of Rs.500/- (Five hundred only) to the defendants.
2. The delay for filing an applications for setting aside an abatement and bring LRs on record is condoned.
3. Abatement in respect of the deceased defendant no.5 is set aside.
4. The plaintiffs are allowed to bring legal representatives of the deceased defendant no.5 as per mentioned in Exh.24 on record.
5. Cost of these applications on plaintiffs.

Date:-13/03/2024

(S. N. Gavali)
Jt. Civil Judge Jr. Dn.,
Risod.

Certificate

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

Name of Stenographer :- Prashant K. More (Grade III)

Court :- Jt. C.J.J.D. & J.M.F.C., Risod.

Date:- :- 13/03/2024

Judgment/Order signed by :- 13/03/2024
the Presiding Officer

Judgment/Order uploaded :- 13/03/2024
on