

R.C.S. No.85/2014

Padmawati & oth-Vs-State & oth.

ORDER BELOW EXH.92

(Passed on 09th day of February, 2023)

1 Present application moved by plaintiff for setting aside abatement order against defendant No.6. Learned counsel for defendant filed his say on the application and opposed it. Heard learned counsels for both parties. Counsel for plaintiff submitted that defendant No.6 expired on 21/05/2020 during Corona period. The plaintiff could not remain present in the Court within Corona period, and therefore, she was not aware about the death of defendant No.6. As plaintiff was not present in the Court due to his accident, the Court passed order of abatement against defendant No.6. The learned counsel for plaintiff recently came to know that after death of defendant No.6, his wife is the only legal heir of deceased. To adjudicate matter effectively, it is required to set aside abatement order. While learned counsel for plaintiff submitted that application is not tenable as per provision of law. Moreover, plaintiff has not mentioned sufficient reason for setting aside order, hence application be rejected.

2 After perusal of record, it appears that on 10/07/2020 learned counsel for defendant No.6 filed pursis vide Exh.88 and submitted Court that defendant No.6 has been expired. The Court can take judicial note of Corona period. The limitation period was extended by the order of Hon'ble Supreme

Court for the said period. Since August, 2021 the working of Court functioning regularly, but plaintiff moved present application on 29/09/2022, while defendant No.6 has been expired on 21/05/2020. There is three months period for filing application to bring LR's of deceased on record according to provision of law. As plaintiff failed to move said application within time, the Court has passed order of abatement against defendant No.6. After 17 to 18 months this application has been moved by plaintiff. After considering extended time granted by Hon'ble Supreme Court, this application has been filed after one year. That means, it is out of limitation.

3 Plaintiff has filed present suit for declaration, partition and separate possession. In the suit for partition status of defendant can be treated as a plaintiff also. Therefore, considering the nature of suit and status of deceased defendant, it will be justified to grant permission to participate in the suit by LR's of deceased. Without setting aside abatement order the legal heirs of deceased defendant cannot participate in the proceeding. In such circumstances, it will be justified to set aside abatement order against defendant No.6.

Hence, application stands allowed.

(Smt. V. R. Jambhule)
Joint Civil Judge (Sr.Dn.),
Darwaha.

Dt/-09/02/2023

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ORDER BELOW EXH.93

(Passed on 09th day of February, 2023)

In present application plaintiff has submitted that to move this application delay has been caused. Already while passing order below Exh.92, the abatement order against defendant No.6 has been set aside. The Court is satisfied about the reasons for condonation of delay mentioned in the application. Hence, by condoning delay, it will be justified to bring the LR's of deceased defendant on record.

Hence application stands allowed.

Delay condoned.

Plaintiff is directed to bring LR's of defendant No.6 on record within 14 days from the date of order.

Accordingly, plaintiff carry out amendment in plaint and submit amended copy of Exh.1 in the Court.

Dt/-09/02/2023

(Smt. V. R. Jambhule)
Joint Civil Judge (Sr.Dn.),
Darwha.