

ORDER BELOW (EXH.29)

PASSED ON THIS 7TH DAY OF JANUARY-3.

This is an application for bringing the legal representative of deceased defendant no. 3 on record.

2. Applicants have contended defendant no. 3 was expired very long back as a result his legal representative were sought to be brought on record. Condonation of delay was also sought, but it was also rejected. The suit is for partition and hence the legal heirs are sought to be heard in the suit. After the death of defendant no. 3 on 20/9/99, the suit was abated but the Hon'ble High Court has not passed any order to that effect and therefore the setting aside of abatement is sought. Hence this application.

3. Defendants have strongly opposed this application by filing their say at Exh. 38 wherein they have admitted date of death of defendant no. 3. They have also admitted earlier rejection of application for condonation of delay and that of bringing LRs on record. Their contention is that the said order was not challenged in appeal and hence it is still binding. The suit is already abated. No separate order therefor is necessary. For these reasons they have prayed to reject the application.

4. Heard the learned counsel for the parties. Perused record, particularly orders below Exh. 25 and 25 dated 18/1/11, in the light of their respective submissions. Admittedly similar application and the application for condonation of delay was rejected by my learned predecessor of senior cadre i.e. Hon'ble Civil Judge Senior Division Pusad. Similar allegations were made in those application. My learned predecessor has considered the pros and cons of those application, the legal and settled position

and the observation of the Hon'ble Supreme Court. Thus already there was decision of this Court on this point. Had the plaintiffs any grievance, they ought to have preferred an appeal before the Hon'ble Appellate Court, but instead that they are wasting valuable time of this Court in deciding similar application again and again. Infact there is absolutely no progress in the suit after passing order on Exh. 24 and 25 on 18/1/11.

5. So far as the ground of the applicants that no separate order of abatement of suit was passed is concerned, in my opinion where the application for condonation of delay and that for bringing LRs of defendant no. 3 was rejected, the abatement takes place of its own force and no specific order is required to be passed. For my opinion I am guided by the observations in the case of Jaylaxmi Janardhan Walwalkar – Vs- Lilachand laxmichand Kapare and others reported in 1999 (1) B an C.J. 177. Therefore no specific order of abatement was necessary. Thus the above contention has no force.

6. The sum and substance of the above discussion is that the application is devoid of any merit. It deserves to be rejected. In view of discussion in foregoing para no.4 the plaintiffs have withheld trial of suit since 18/1/11. Thus present application is also one of the futile attempt to prolong trial with the aid of applicants. They have consumed valuable time of this Court since 18/1/11 till today which needs to be compensated by saddling

reasonable and minimum cost on the applicants. The application is devoid of any merit. Hence the order.

ORDER

- (1) The application (Exh.29) is hereby rejected with cost of Rs. 500/- to be deposited by the applicants to this application in the Court on the next date, on failure appropriate order on Exh.1 will be passed.
- (2) Both parties are directed to assist the Court in early disposal of the suit.

Dt.07/01/13.

(P.D.Subhedar),
Civil Judge(Jr.Dn.),
Mahagaon.