

Order below Ex.54 in Spl.C.S.No. 306 / 2009.

1. By this application, the plaintiff has prayed to joined the legal heirs of defendant no.4 on record. Read the application and the relevant provision of Civil Procedure Code. Also read the written objection filed by the defendant no. 1 to 3 against the application at Ex.56. Heard the arguments of the plaintiff. Nobody present to argued the matter on behalf of defendants, hence the objection filed at Ex. 56 is taken into consideration as arguments.

2. L. Advocate for the plaintiff has argued that, in this matter defendant no.4 died. Even after his death, the suit doesn't abates. Present defendants no. 1 & 2 are the legal heirs of deceased defendant no.4 who are already on record. The proposed defendants as shown at Sr.no. 3 to 5 in the application are required to be joined under the provision of O.22 R.2 of the Civil Procedure Code. Joining the legal heirs doesn't prejudiced any legal rights of other side. Non joining of legal heirs would certainly prejudiced the legal rights of plaintiff. In these circumstances, it is prayed to allow the application and thereby it is prayed to joined the legal heirs of defendant no.4 on record.

3. Considering the written objection of the defendant side and upon reading of the application, it transpires that, plaintiff has not mentioned the date of death of deceased defendant no.4. No copy of death certificate of defendant no.4 has been produced in support of this application, so that this court can verify the exact date of death.

Without mentioning the exact date of death, or without production of copy of death certi., how the delay could be condoned or considered. If 90 days are expired, the suit would automatically abates against defendant no.4. No prayer for setting aside of abatement has been made in the application. No prayer of condonation of delay has been asked in the application. Even it is also not the contention in the application that the application is filed within time prescribe under the Limitation Act. Only prayer with regard to joining the legal heirs as party to the proceedings has been asked. Thus, though application is not contested during the arguments by the defendant side, still it is not maintainable as per law. This court is very much aware with the principle that while deciding this kind of application, a liberal approach is required to be adopted. But negligent or careless act of the plaintiff cannot further be honored by granting such type of vague and incomplete application. It is the say and submission of the plaintiff that, defendants no. 1 & 2 are the legal heirs of deceased defendant no.4, who are already on record, thus non joining other legal heirs as shown in the application doesn't fatal to the suit at this juncture. In these circumstances, I do hereby pass following final order in the interest of justice.

FINAL ORDER.

The application stands rejected with no order as to cost.

Surat.

04-07-2016

(Prashant N. Raval)
11th Addl. Sr. Civil Judge
U.I.C.No.GJ – 00708.