

MHPU020006711995



R.C.S. No. 201727/1995
*(Konde Nama Paigude etc
Vs. Tanhabai Bhiku Paigude
others)*

COMMON ORDER BELOW EXH. 169, 171 & 173.
(Passed on 05th August, 2024)

Applications Exh. 169, 171 & 173 are filed for setting aside abatement, condonation of delay and to bring the L.Rs. of deceased defendant Nos. 1.D & 1.E on record respectively.

2. I have read the above mentioned applications. The defendants despite opportunities failed to file say to these applications. The proposed L.Rs. of defendant Nos. 1.D & 1.E despite service of notice failed to appear before the Court and did not file their say to these applications. I have perused the record.

3. I heard the learned counsel for applicants / plaintiffs and have gone through the contents of the applications. It is seen that the delay caused is more than two years. Moreover, the reason mentioned for causing delay is not satisfactory and justifiable. However, it is pertinent to note that in view of order passed below application Exh.143 some of the L.Rs. of defendant Nos. 1.E and the L.Rs. of 1.G are already brought on record by condoning the delay caused. So also, as per the settled position of law, the laws of procedure are devised for advancing justice and not impeding the same. The Code of Civil Procedure

is designed to facilitate justice and further its ends and it is not a penal enactment. The laws of procedure by themselves do not create any impediment or obstructions in the matter of doing justice to the parties. So far as present matter is concerned it is the suit filed for partition, separate possession and declaration and for perpetual injunction. So also, the right to sue survive.

4. Therefore, in the light of above discussion and considering the nature of the suit and to avoid the multiplicity of the proceeding, it would be necessary and justifiable to set aside the abatement and to condone the delay caused to bring the L.Rs. on record. Hence, in view of above discussion I am inclined to allow applications Exh. 169, 171 & 173 in the interest of justice. However, as the delay is caused on the part of plaintiffs the cost can be imposed upon them while deciding the applications. Hence, I proceed to pass the following order;

ORDER

- 1] The applications Exh. 169, 171 & 173 are allowed in the interest of justice subject to cost of Rs. 3,000/-.
- 2] The abatement stands set side.
- 3] The delay caused to bring the legal heirs on record is hereby condoned.
- 4] The applicants/plaintiffs shall carry out the amendment to bring the L.Rs. of deceased defendant Nos.1.D & 1.E on record on or before next date.

Pune.
Date : 05/08/2024.

(Smt. P. V. Rane)
4th Jt. Civil Judge(Sr.Dn.), Pune.

CERTIFICATE

“I affirm that the contents of this P.D.F. File judgment are same word for word as per original judgment.”

Name of Steno	:	Miss. F. J. Bijapure, (Steno Grade-III)
Court Name	:	Smt. P. V. Rane
		4 th Jt. Civil Judge (S.D.), Pune.
Date	:	05/08/2024
Judgment/Order signed by		
presiding officer on	:	06/08/2024
Judgment uploaded on	:	06/08/2024