

SHALIKRAM
PRALHADRAO
BOREY

Digitally signed
by SHALIKRAM
PRALHADRAO
BOREY
Date:
2022.07.13
11:43:22 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 6026 OF 2018

Pramila Sadashiv Jagtap

... Petitioner.

Versus

Shamrao Rangrao Deshmukh (deceased)
through LRs. :-

... Respondents.

a. Nirmala Shamrao Deshmukh & Ors.

Mr. V. V. Salunke, Advocate for the Petitioner.

Mr. Vaibhav D. Kadam, Advocate a/w. Aditya Thorat for
Respondents 5, 8 & 9.

CORAM : ROHIT B. DEO, J.

DATE : JULY 12, 2022

P.C. :-

1. Petitioner is the original Plaintiff in Regular Civil Suit 36 of 2012, which is brought for declaration, partition and separate possession.

2. During the course of trial, Defendant 1- Mr. Shamrao Rangrao Deshmukh expired on 08.01.2016. The learned counsel for deceased- Defendant 1 informed the trial Court of the death of his client and filed on record the death certificate

on 08.03.2016.

3. The Petitioner/Plaintiff, who then was 74 years, contends that her nephew -Prashant Jagtap had expired on 10.04.2016. The Plaintiff had already lost her son in 2012 and was dependent on her nephew for not only to conducting the litigation but her day-to-day affairs. The Plaintiff contends that she is not residing at Yeola where the suit is instituted. It was on such premise that the Plaintiff preferred an application, seeking to bring on record legal heirs of deceased Defendant 1. The Application was accompanied by another Application Exhibit 69, seeking condonation of delay. The learned trial Judge has rejected the Applications Exhibits 68 and 69 on the premise that the Plaintiff did not apply for setting aside the abatement order.

4. I am satisfied that the order impugned is unsustainable. The Application seeking permission to bring on record the legal heirs of Defendant 1 could not have been rejected on the hyper-technical and pedantic ground that separate application for setting aside the abatement is not preferred. Implicit in the prayer is that the abatement may be set aside. The learned

trial Court ought to have appreciated that in a partition suit, it is in the interest of all stake holders, Plaintiff or Defendant, that all the parties are represented. Lis must culminate in final and effective adjudication and, if on hyper technical ground the parties, who may have otherwise share in the property, are kept on of litigation, it would be difficult for the trial Court to make effective order in the partition suit.

5. The orders impugned are set aside.

6. The delay in bringing on record the legal heirs of Defendant 1 is condoned.

7. The Application for bringing on record the legal heirs of deceased-Defendant 1 is allowed. Abatement, if any, is set aside.

8. Petition is allowed in the aforestated terms.

(ROHIT B. DEO, J.)

.....