



Reserved on: 14.06.2024

Pronounced on: 21.06.2024

A.Nos.2583, 2584, 2586 & 2587 of 2024
in TOS.No.18 of 2014

P.B.BALAJI, J.

The above applications have been taken out by the third party to the Testamentary Original Suit for the following reliefs:

a.To condone the delay of 415 days in filing the Application to set aside the abatement caused by the death of the sole plaintiff in the TOS;

b.To set aside the abatement caused by the death of the sole plaintiff in the TOS;

c.To bring on record the legal representatives namely the Applicant as the 2nd plaintiff in the TOS and

d.To amend the prayer in the TOS to enable the 2nd plaintiff to get the letters of administration with the will annexed, as sole legal heir and sole beneficiary under the will of the deceased, late E. Joseph raj.

2.I have heard M.Vijay Anand for M/s. Sree Sun Associates learned counsel for the Applicant in all these Applications and Mr. R.Varadaraj, learned counsel for respondents in all these Applications.



A.Nos.2583, 2584, 2586 & 2587 of 2024

WEB COPY

3.Mr.K.Vijay Anand, learned counsel for the Applicants would submit that the sole plaintiff in the TOS died, necessitating the present applications. According to the learned counsel for the applicants, the proposed 2nd plaintiff has stepped into the shoes of the mother, J. Victoria Rani, being only legal heir, besides also being the sole beneficiary under the will, which is the subject matter of the above TOS. The learned counsel for the applicants therefore prays that all the Applications are allowed.

4.Per contra, Mr.R.Varadaraj, learned counsel for the respondents would submit that the number of days of delay mentioned is wrong and it ought to have been 473 days at that point. He would also state that the avarement that the Applicant is the only legal heir of late, J.Victoria Rani is incorrect and that the deceased J.Victoria Rani had three children. Therefore, the Applicant cannot be recognized as the sole legal representative and consequently, she alone be impleaded.



A.Nos.2583, 2584, 2586 & 2587 of 2024

5.I carefully considered the rival submissions advanced by the counsel on either side.

6.In so far as the Application for condonation of delay is concerned, the number of days as set out by the Applicant is found correct, especially, discounting the period extended by the Hon'ble Supreme Court on account of COVID-19 pandemic. Therefore, I do not see any ground available to reject the application on the ground of incorrect number of days of delay being mentioned. Similarly the question of setting aside the abatement also deserves consideration and both these Applications are to be allowed.

7.However, with regard to the other two applications namely to bring on record the Applicant as the 2nd plaintiff and consequently amendments in the TOS, especially, in the prayer column, I find that there is an issue raised by the respondents that apart from the applicant there are other legal heirs. In such circumstances as mandated under Order XXII Rule 5 of the Code of Civil Procedure, 1908, the question



A.Nos.2583, 2584, 2586 & 2587 of 2024

has to be determined by the court and the parties will have to lead evidence.

8.In this regard, for adjudication of these two applications, I am referring the said question to the learned Master and the parties are directed to lead evidence regarding the legal representatives of the deceased, J. Victoria Rani. The Master shall permit the parties to lead oral and documentary evidence and enter a finding regarding the legal representative of the deceased, J.Victoria Rani and forward the same to this Court within a period of eight weeks.

9.Post the matter before the Additional Master III on 01.07.2024.

21.06.2024

ata



WEB COPY



A.Nos.2583, 2584, 2586 & 2587 of 2024

P.B.BALAJI, J.

ata

Pre-delivery order made in
A.Nos.2583, 2584, 2586 & 2587 of 2024
in TOS.No.18 of 2014

21.06.2024