

S.No.17

Regular List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CR 32/2018

ABDUL RASHID DAR AND ORS.

...Petitioner(s)/Appellant(s)

Through: Mr. P.S. Ahmad, Advocate

Vs.

MUZAFFER AHMAD DAR AND ORS.

...Respondent(s)

Through: Mr.M. Sultan, Advocate**CORAM:HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

ORDER
10-02-2025

1. This case does not warrant any further pendency as it has already consumed more than six years in running on a point which did not deserve such a long pendency.
2. In a civil suit for partition by metes and bounds, declaration and permanent prohibitory injunction qua the suit property, the death of defendant No.1- Rehman Dar came to take place after he had come to appear in the civil suit and file his written statement to contest the suit of the plaintiffs before the Court of Sub-Judge (Chief Judicial Magistrate)Srinagar. The suit is titled “Ghulam Mohi-ud-din Dar and Others versus Rehman Dar and Others”.
3. Although it has been pleaded by Mr. P.S. Ahmad, learned counsel for the petitioners that the fact of

demise of the defendant No. 1-Rehman Dar was all along known to the plaintiffs from the very first day of the demise of the defendant No.1, on account of the fact that defendant No.1- Rehman Dar being paternal cousin of the plaintiffs staying in the same vicinity and even the burial being attended by the plaintiffs yet going by the record of the civil suit, in particular the impugned order, the fact about the death of the defendant No. 1-Rehman Dar came to be declared on record only when the counsel for the deceased defendant No.1- Rehman Dar in October, 2016 apprised the trial court that the defendant No. 1 has expired in March, 2016.

4. The plaintiffs, accordingly, acting with abundant caution at their disposal came forward with an application not only for bringing on record the legal representatives of the deceased defendant No.1-Rehman Dar but also an application for setting aside abatement of the civil suit qua the defendant No.1-Rehman Dar, if any taken place, and an application for condonation of delay in bringing on record the legal representatives of the deceased defendant No. 1.

5. By virtue of an order dated 08-11-2017, the trial court of Sub-Judge (Chief Judicial Magistrate) came to allow the condonation of delay application and set aside the abatement of the civil suit in so far as the deceased defendant No. 1 was concerned and brought on record the legal representatives of the defendant No. 1- Rehman Dar who are the petitioners before this Court having come forward to assail the order dated 08-11-2017 read with order dated 10-07-2018 passed by the 2nd Additional District Judge, Srinagar before whom an appeal was preferred by the petitioners purportedly under Order 43 rule 1(k) of the J&K Code of Civil Procedure Svt., 1977.

6. Learned counsel for the petitioners, who are legal representatives of the deceased defendant No.1- Rehman Dar, very vehemently submits that law of limitation admits of no equity once the time prescribed sets running and accordingly in the present case the time for bringing on record the legal representatives of the deceased defendant No. 1- Rehman Dar against whom right to *sue* was not subsisting in favour of the co-defendants but was to survive only against the legal representatives of the deceased defendant No. 1-

Rehman Dar qua his estate and as such, the plaintiffs ought to have acted within the time prescribed with effect from March, 2016, the day the deceased defendant No. 1-Rehman Dar demised. This aspect has been adverted to by the learned Sub-Judge Judge, Srinagar in his order.

7. In matter of reporting death of a litigant in an ongoing litigation a duty is cast upon the counsel representing a given litigant demising to apprise the court about his/her death in terms of Order 22 Rule 10-A Code of Civil Procedure Svt., 1977 as it was then and now the Code of Civil Procedure 1908.
8. Since the trial court with due sense of responsibility towards the record has come forward with an observation that the death of the defendant No.1-Rehman Dar came to be notified by the deceased defendant No. 1's counsel in October, 2016 and, as such, by that reckoning, the period of six months would have ensued to the plaintiffs from the said date of notification of the death of the deceased defendant No. 1- Rehman Dar and accordingly, there was no delay on the part of the plaintiffs in coming forward with an application for bringing on record the legal

representatives and simultaneously, there was no occasion for the suit to suffer abatement in so far as the defendant No. 1- Rehman Dar was concerned.

9. Accordingly, this Court finds that the order passed by the trial Court is legally sound admits of no interference under the revisional jurisdiction in terms of section 115 of the J and K Code of Civil Procedure Svt., 1977 and therefore rejects the revision petition.

10. Given the fact that the pendency of this revision petition all along has kept the suit in a frozen status to lose six years of trial time, as such, this Court impresses upon the trial court to undertake the adjudication of the civil suit with due dispatch without any further wastage of time in unwarranted adjournments, be it from the plaintiffs' side or from the defendants' side.

11. The parties are directed to appear before the trial court below on 28th February, 2025.

12. Record of the trial court, in case summoned, be returned back.

13. Disposed of.

(RAHUL BHARTI)
JUDGE

SRINAGAR:
10-02-2025
Mubashir