

IN THE COURT OF CIVIL JUDGE (SD), GOGARI
PRESIDED BY SH. SUMIT KUMAR SINGH
TITLE SUIT NO. 23 OF 2015 (G)
CIS NO. 154 OF 2018

IN THE MATTER OF:

ABDUL RAHIM & ORS.

...PLAINTIFFS

VERSUS

MD. JABBAR & ORS.

...DEFENDANTS

ORDER
18.04.2024

Present application dated 12.02.2024 has been filed by the plaintiff under Order 22 Rule 4 CPC alleging inter-alia that defendant no. 1 had died on 15.12.2023 leaving behind his legal representatives. Hence, prayer was made to substitute the legal representatives.

On the other hand defendants have made oral objection to the effect that while defendant no. 2 was deleted vide order dated 29.08.2022 by this Court, this Court specifically observed that the defendants have been arrayed as party to the suit only on the ground that they have formed an illegal masjid committee in view of *tabliqnama* in favor of plaintiff. As such it was claimed by defendants that the legal heirs of defendant no. 1 cannot be arrayed.

Heard Id. Counsel for the parties and perused the record. It appears that this Court while deciding similar application qua defendant no. 2 had made the following observations:

“After some arguments, this Court had asked the plaintiff to assist this Court to understand how, right to sue had survived on the legal representatives of deceased defendant no. 2. It was unanimously agreed that defendant no. 2 had claimed himself as the member of Masjid Committee. Hence, he had interfered in the peaceful possession of the plaintiff. Thus, the plaintiff had arrayed him as a party to the suit. As per plaintiff the formation of Masjid Committee is illegal in view of the Tabliqnama in favor of their ancestors. Since the parties have agreed that the deceased defendant no. 2 was arrayed only because he had interfered in the alleged possession of plaintiff, as such right to sue had not survived. Hence, defendant no. 2 is struck out from the memo of parties.”

The above observation makes it clear that the plaintiff had arrayed the defendants only because they have formed an alleged illegal Masjid Committee. Hence, the said observation also makes it clear that on the death of any member of the Masjid Committee, the next in office can be arrayed as party but the legal representatives of the deceased member of the said Masjid Committee cannot be arrayed. As such this application is misconceived. Hence, the same is hereby dismissed with cost of Rs. 1000 payable to the Gogari Bar Association Advocates Welfare Fund.

However, since the fact of demise of defendant no. 1 has been brought on record, and the name of new member has not been supplied, it is expedient to delete the name of defendant no. 1 from the array of parties until new member of Masjid Committee is brought on record.

Plaintiff had filed another application on 12.12.2023 under Order 22 Rule 3 CPC alleging that plaintiff no. 1 had filed on 29.11.2023 leaving behind his legal representatives. It was claimed that the right to sue had survived on the legal heirs of deceased plaintiff no. 1. Hence, prayer was made to array the LRs on record.

This application has not been objected by the defendants.

Heard Id. Counsel for the parties and perused the record. The application is within time and order and the right to sue had survived upon the named persons. As such the present application is hereby allowed. The LRs of deceased plaintiff no. 1 is taken on record.

List the matter on 22.05.2024. Last chance for filing documents granted to the parties.

Civil Judge (SD)