

RCS-22/2016
ORDER BELOW EXH.17, 18 & 19
(TO ADD PARTIES / HEIRS)

1. Heard, consider the record of the case and the legal provisions.
2. The factual matrix of this applicant is that the plaintiff has filed the application vide Exh.17, 18 & 19 to implead the legal representatives/heirs of deceased defendant No.1 Mr. Amarshibhai Lakhabhai Vaghera namely: Jayaben Amarshibhai Vaghera as defendant No.1/1, Vijuben Amarshibhai Vaghera as defendant No.1/2, Pravin Amarshibhai Vaghera as defendant No.1/3, Hitesh Amarshibhai Vaghera as defendant No.1/4, Mahesbhai Amarshibhai Vaghera as defendant No.1/5, on the basis of the declaration of the heirs and deed of death on 23/09/2016 affidavit by plaintiff vide Exh.19 and 19/1, consequential upon death of the defendant No.1.
3. Thereafter, the process has served to defendant No.1/1, $\frac{1}{4}$ & $\frac{1}{5}$ vide Exh.25, 26 & 27 as the acknowledgment has produced with respect to the service of process to proposed defendant No.1/1, $\frac{1}{4}$ & $\frac{1}{5}$, furthermore, the process has served to proposed defendant $\frac{1}{2}$ vide Exh.23 & 31. Moreover, the process to proposed defendant No.1/3 has also served vide Exh.31 and Pravinbhai Amarshibhai Vaghera appeared before the Court and produce the application vide Exh.30 dated 03/01/2020 to file the reply and the application was granted.

4. The learned counsel Mr. J.D. Makad appeared on behalf of other defendants has filed the objection vide Exh.20 dated 21/08/2017. Other parties to the suits have also not produced any objections in this regard. Moreover, the proposed heirs has also not taken any objection with respect to implead them as parties to the suit and also has not taken any objection with respect to the death and the date of death 23/09/2016. Moreover the parties has not filed the objection with respect to the present applications, therefore, their right to file reply was closed on 17/12/2021.

5. After considering the record of the case that right to be sued survived upon the heirs of the defendant. The plaintiff's litigating interest has survived against the proposed defendants in the suit property.

6. After considering the relevant material produced and arguments, it is observed, without going into the merit of the case, by the court that plaintiff has prima facie litigating interest against heir of defendant, in the suit property which is necessary parties to the suit and the suit cannot be effectively adjudicated in absence of the parties concerns and to avoid multiplicity of proceedings. After death of the defendant, the right to be sued survive of the deceased defendant into his legal representative/heirs and necessary to add as party in this suit. Moreover no strong and sustainable objections have been taken about the heirship of the heirs of deceased defendant.

7. As per the record it is prima facie shows that the defendant has died No Death Certificate has produced by the parties, but no objection has filed with respect to the death and date of death by parties in the suit. The plaintiff has filed this application on 21-08-2017 and mentioned that the defendant No.1 was died on 23/09/2016. But this application was filed about 11 Months from the death of defendant No.1 and the suit is automatically abated after 90 days of death of the defendant No.1. But considering the nature of the suit the right to sue is survive in this case. Having considering the nature and the record of the suit and in interest of justice and to avoid multiplicity of proceedings, the delay is hereby condoned and the abatement set aside *as the procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Courts are to do justice, not to wreck this and product of technicalities.*

After considering the legal provisions, record of the case and arguments, therefore this court is hereby considered that relief is ex-debito-justitive Hence this court hereby passes the order in ex-debito-justitiae.

ORDER

1. The Application vide Exh.17, 18 & 19 are hereby allowed as per O.22 R. 4 of the Civil Procedure Code 1908.
 2. The heirs of defendant No.1 is hereby order to implead as parties to suit as Defendant Nos.1/1 to 1/5.
 3. The suit is hereby amended accordingly.
- Pronounced and signed in the open court today on 9th February, 2022.

Date:09/02/2022

(Ms. SUDESH)
Principal Civil Judge
(GJ No.01400)
Jodiya, Jamnagar