

ORDER BELOW AN APPLICATION AT EXH. 241

1. Read the present application, heard Ld. Advocate Mr. S. A. Visani on behalf of the plaintiff and heard Ld. Advocate Mr. A. M. Solanki on behalf of the proposed defendant.

2. The plaintiff has filed the present application under O. 6, Rule 17 and Order 22 of the Civil Procedure Code to join the legal heir of late defendant - Babubhai Karshanbhai Senjaliya. It is submitted in this application that the original defendant – Babubhai Karshanbhai Senjaliya is expired on 06/12/2020 and his wife Kasturben is sole legal heir of late Babubhai and the plaintiff has right to sue survive against the proposed heir of deceased defendant and therefore, it is necessary to bring the legal heir of defendant as legal heir of deceased defendant – Babubhai Karshanbhai Senjaliya on record. It is also submitted that for the cause of justice the present application is required to be allowed.

3. The proposed defendant has not filed any written reply to the present application in this matter.

4. I have heard the Ld. Advocate Mr. S. A. Visani appearing on behalf of the plaintiff and he has corroborated the contents of the present application through his oral submission. He has further submitted that the legal heir of the defendant ought to bring on record within 90 days and the present application is filed within stipulated time as prescribed in law and therefore, present application be allowed.

On the other hand Ld. Advocate Mr. A. M. Solanki appearing on behalf of the proposed defendant has just said "**Heard**" and submitted that necessary order as court think fit may be passed.

5. In support of the application, the plaintiff has produced his affidavit at Exh. 251, wherein he has corroborated the facts of the application that defendant Babubhai is expired on 06/12/2020 and when the plaintiff came to know, he immediately filed an application to join Kasturben as legal heir of late Babubhai vide Exh. 241. It is further deposed that after filing the application, Kasturben i.e. legal heir of late Babubhai engaged an advocate and submitted Vakalatnama at Exh. 242 on 25/06/2021 and not produced any objection and hence, she has no objection against the present application of joining heir of late Babubhai. The address of Kasturben is mentioned in affidavit as "31, Jankipark Society, Aaimata Road, Nr. Unity Hospital, Surat". Ultimately, it is prayed to allow the present application.

6. Having heard the Ld. Advocates appearing on behalf of the respective parties and having considered the contents of the present application in light of the provision of O. 22, R. 4 of Civil Procedure Code, it appears that the original defendant – Babubhai Karshanbhai Senjaliya is died on 06/12/2020 and it is also revealed from this application that the right to sue still survive against the legal heir of the defendant. Having considered the date of application and date of death of deceased defendant - Babubhai Karshanbhai Senjaliya, it becomes clear that the present application has been moved by the plaintiff within stipulate time period as prescribed in law. It is pertinent to be noted that, there is no any stiff objection against the present application by any of the contending parties. Moreover, for adjudication of the real dispute involved in the present suit, the proposed legal heir of deceased defendant as mentioned in present application is required to be impleaded in the present suit. Consequently, in the interest of justice, following order is passed.

::: ORDER :::

- ~ The present application is hereby allowed and the legal heir of deceased defendant Kasturben Babubhai Senjaliya as mentioned in the present application is hereby ordered to be brought on record as defendant in place of original defendant - Babubhai Karshanbhai Senjaliya under the provision of O. 22, R. 4 of Civil Procedure Code.
- ~ The plaintiff is hereby ordered and directed to make necessary amendment in the suit within 14 days from the date of order and he shall produce amended plaint.
- ~ No order as to costs.

Signed & Pronounced in open court today on this 24th day of January, 2024.

Place : Amreli
Dt. 24/01/2024

(Mahebubali Jahurali Saiyed)
Principal Senior Civil Judge,
Amreli
GJ-00545