

MHAH080015272014



Order below Exh.133 in RCS No.427/2006

The plaintiff has filed the present suit against defendants for the measurement, possession of encroached portion and perpetual injunction. The present application at Exh. 133 is moved by the plaintiff for bringing legal representative of deceased defendant Nos. 6 Vinayak Dagadu Kolapkar on record.

2. The learned counsel for the plaintiff contended that, defendant Nos. 6 Vinayak Dagadu Kolapkar died on 25.07.2021. He further submitted that, after the death of defendant Nos. 6 Vinayak Dagadu Kolapkar, his legal representative as mentioned in application at Exh. 133 have right to sue. The present application is moved within stipulated time. Therefore, he prayed that, the legal representative of defendant may bring on record.

3. The learned counsel for defendant strongly resisted the application and given say to the application on application overleaf. He submitted that, the application Exh. 133 is false and misconceived in nature. Hence, he prayed to reject the application.

4. Perused the record. It reveals that, the present suit is filed by the plaintiff on 27.11.2006 for measurement of suit property, possession of encroached portion and perpetual injunction in respect suit property and perpetual injunction. I have perused the death certificate of defendant Nos. 6 Vinayak Dagadu Kolapkar filed by the plaintiff on record. On perusal of the same it reveals that, defendant Nos. 6 Vinayak Dagadu Kolapkar died on 25.07.2021.

5. Order XXII Rule 4 Code of Civil Procedure, 1908 contemplates that LRs of defendants are required to be brought on record within the period prescribed under the Limitation Act i.e. within 90 days as provided for under [Article 120](#) of the Limitation Act. In the present suit, defendant Nos. 6 Vinayak Dagadu Kolapkar died on 25.07.2021 therefore, it is mandatory on plaintiff to bring the names of legal representatives of defendant Nos. 6 Vinayak Dagadu Kolapkar on record within the period of 90 days from 25.07.2021 i.e. before, 28.09.2021. The plaintiff has moved the present application on 02.09.2021. Hence, it is crystal clear that, the plaintiff has moved the said application within stipulated time. Furthermore, after the death of defendant Nos. 6 Vinayak Dagadu Kolapkar, his legal representative have right to sue. No harm is going to be caused to any of defendants, if legal representative of defendant Nos. 6 Vinayak are taken on

record. They are having every legal right to contest the suit on merit. Therefore, to resolve the dispute finally between the parties, it is essential to take legal representative of defendant on record. Therefore, the present application deserves to be allowed. Hence, I pass following order :-

Order

1. The application is allowed.
2. Permission is granted to bring legal representative of defendant Nos. 6 Vinayak Dagadu Kolapkar on record. The plaintiff shall carry out amendment in the plaint and its copy be provided to proposed defendants.

Date: 21.10.2021
Place: Sangamner.

(Swapnali Methaji Waghmare)
Jt. Civil Judge J.D.,
Sangamner.