

MHAH180011102013



Order passed below Exh. 106 in R.C.S No. 375/2013
*(Thakubai Pandurang Pilgar and others Vs. Rambhau Tukaram
Kanade and others)*

1. The plaintiffs have filed suit for declaration and for separate possession of the suit property wherein the plaintiff No. 1 filed present application under Order XXII Rule 4 of the Code of Civil Procedure, (hereinafter referred to as CPC) for taking legal representatives of the deceased plaintiff No. 2 on record and for consequent amendment in the plaint.
2. Perused the application.
3. Heard learned Advocate for both parties.
4. It is submitted that, the plaintiff No. 2 namely Housabai Rakhama Ghandat died on 30/03/2018. Therefore, through this application, it is prayed for taking legal heirs of the deceased plaintiff No. 2 on record. The plaintiff No. 1 and 2 are the real sisters. It is submitted that, the heirs mentioned in the application are legal heirs of the LRs of the deceased. Therefore, it is necessary to take them on record. The proposed amendment is necessary for deciding suit on merit. It will not change the nature of the suit. Therefore, the plaintiff No. 1 has prayed to allow the proposed amendment.

5. The defendants have objected the application by filing say at Exh. 111. It is contended that, the plaintiff No. 1 is not having any right to file this application. This application cannot be moved at this stage as the matter is pending for the final argument. The plaintiff No. 2 has died on 30/03/2018. However, the legal representatives of the plaintiff No. 2 did not file the application within the prescribed period of the limitation. Therefore, the suit against the plaintiff No. 2 is abated. The plaintiff No. 1 was having idea of the death of the plaintiff No. 2 as she was the sister of plaintiff No. 2. However, she has deliberately did not file the said application. The present application is filed after six and half years after the death of the plaintiff No. 2. Therefore, the application is not within the prescribed period of the limitation. The said application is not maintainable. Therefore, it is prayed to reject the application.

6. This is an application to array legal heirs of the deceased plaintiff as party plaintiffs. Before going into the merits of the case, it would be apposite to see some provisions of the CPC. Order XXII Rule 1 of the CPC deals with the question of abatement on the death of the plaintiff or of the defendant in a civil suit. Order XXII Rule 2 relates to procedure where one of several plaintiffs or defendants dies and right to sue survives. Order XXII Rule 3 of the CPC deals with procedure in case of death of one of several plaintiffs or of sole plaintiff. Order XXII Rule 4 of the CPC, however, deals with procedure in case of death of one of several defendants or of sole defendant.

7. Order XXII Rule 3 of the CPC provides that, Where one

of two or more plaintiffs dies and the right to sue does not survive against the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

8. On perusal of record, it appears that the plaintiff No. 2 is died 30.03.2018. It is not in dispute that the plaintiff No. 2 is died 30.03.2018. It is also not in dispute that, the names mentioned in the application are legal representatives of the deceased plaintiff No. 2. The plaintiffs have filed present suit against the defendants for declaration and for separate possession in respect of the suit property. From the nature of suit, right to sue survives in the legal heirs of the deceased plaintiff No. 2. Considering the nature of the suit and to decide the actual controversy between the parties, it is necessary to bring the legal representatives of deceased plaintiff No. 2 on record. In such circumstances, as the right to sue survives against the deceased plaintiff No. 2, it will be proper to allow the application.

9. Considering the nature of suit, it is necessary to bring all parties on record to decide the matter on merit. Therefore, the proposed amendment is necessary to decide the real controversy between the parties and to decide the matter on merit. Hence, the order.

ORDER

1.	Present application is allowed in following terms.
2.	It is hereby permitted to bring LR's of deceased plaintiff No. 2 namely Housabai Rakaham Ghandat on record as mentioned in the application. It is also permitted to carry out amendment in the plaint in respect of parties as prayed.
3.	The proposed amendment in plaint be carried out accordingly within the stipulated period.
4.	Requisite copies of amended plaint be submitted on record.

Date: 08.10.2024

(Sou. R.S. Tapadiya)
Jt. CJJD & JMFC, Rahuri

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original judgment.

- (a) Name of the Stenographer : Sou. J. N. Gali (Sten L.G)
- (b) Court : Jt. CJJD & JMFC,
Rahuri
- (c) Date of Judgment/Order : 08.10/2024
- (d) Judgment/Order signed by : 08.10/2024
P.O on
- (e) Judgment/Order uploaded : 08.10/2024
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