

Regular Civil Suit Number 14/2020

CNR Number MHAH-23-000019-2020

Jalindar Vinayak Pandarkar Plaintiffs

Versus

Kalidas Bhikaji Pandarkar Defendants

ORDER BELOW EXHIBIT 15

- 1) The suit is for removal of encroachment, recovery of possession, and perpetual injunction. The plaintiffs have filed the application on 18/07/2022 vide exhibit 15 to bring the legal representatives of defendant number 6 on record. The court has called the say of opposite side on application vide exhibit 49. The defendants have not filed say but raised strong objection during argument.
- 2) I have perused application vide exhibit 15 filed by plaintiff. I have also gone through affidavit at exhibit 16. I have heard both sides.
- 3) Upon hearing of both sides and on perusal of exhibit 15 thereon, the following points arise for my consideration.

Sr. No.	Points	Findings
1.	Are the plaintiffs entitled to bring the legal representatives of defendant number 6 on record as party to suit ?	Yes
2.	Are Plaintiffs entitled for relief of amendment ?	Yes
3.	What is order ?	The application is allowed.

Reasons

As to point number 1 to 3

- 4) The plaintiffs have filed the application vide exhibit 15 and stated that the legal representatives of defendant number 6 should join the suit as party as per the provision of order 22 rule 4 of code of civil procedure. The defendants have raised the objection.
- 5) On perusal of death extract of defendant number 6 vide exhibit 19, it becomes clear that defendant number 6 namely Sangita Rohidas Pandarkar died on 30/04/2022.
- 6) I have perused the provision of Order 22 Rule 4 of Code of Civil Procedure. It reveals that when one of two or more defendants dies and right to sue does not survive against the surviving defendants alone, the court shall on the application made in this behalf shall cause the legal representatives of deceased defendants to be made party to the suit. In present suit, defendant number 6 namely Sangita Rohidas Pandarkar died on 30/04/2022. The right to sue does not survive against surviving defendants alone. In order to enable the court to adjudicate effectively, completely, to settle all the questions involved in the suit, and in the interest of justice, it is necessary to allow the application to bring the legal representatives of deceased defendant number 6 on record. I have also perused article 120 of The Limitation Act. The application vide exhibit 15 is filed within period of limitation. The right to sue does not survive against surviving defendants alone, as per the provision of Order 22 Rule 4 of Code of Civil

Procedure. The suit requires to be amended. In order to enable the court to adjudicate effectively, completely and to settle all the questions involved in the suit, it is necessary to allow the application to bring on record the legal representatives of deceased defendant number 6 namely Sangita Rohidas Pandarkar. The amendment is necessary to decide real dispute in the parties. Therefore the application is allowed. In the result, the following order is passed.

ORDER

- 1) The application vide exhibit 15 is allowed.
- 2) The legal representatives of deceased, defendant number 6 namely Sangita Rohidas Pandarkar as stated in the application vide exhibit 15, shall be made as party to the suit. The suit shall be amended accordingly on or before next date by plaintiffs. The plaintiffs are to file on record copy of amended plaint on before next date. The suit shall proceed further in accordance with provisions of law.

Sd/-

K. A. Katkar

Date - 18/07/2022

Joint Civil Judge (J. D.), Shrigonda

:-CERTIFICATE:-

I affirm that, the contents of this pdf file order are same, word for word as per original order.

Case No.	:-	R.C.S.No. 14/2020
Name of Stenographer	:-	Smt. S. V. Jadhav
Court Name	:-	Smt. K. A. Katkar, Jt. Civil Judge, J.D.& J.M.F.C, Shrigonda.
Date of Decision	:-	18/07/2022
Order signed by P.O. on	:-	18/07/2022
Order uploaded on	:-	18/07/2022