

Regular Civil Suit Number 17/2011
CNR Number MHAH-23-000750-2014

1. Macchindra Kisan Bhade Plaintiffs
Versus
1. Tukaram Dattatray Bhade Defendants

ORDER BELOW EXHIBIT 100

1. The suit is for partition. The plaintiffs have filed the application on 06-11-2023 vide exhibit 100 to cause the legal representatives of deceased defendant number 2, 3 and 4 on record. The court has called the say of opposite side on application vide exhibit 100. The defendants have not filed say but raised strong objection during argument. Hence, application vide exhibit 100 is to be rejected.

2. I have perused application vide exhibit 100 filed by plaintiffs. I have also gone through affidavit at exhibit 101. I have heard both sides.

3. Upon hearing both sides and on perusal of exhibit 100, the following points arise for my consideration.

Sr. No.	Points	Findings
1.	Are plaintiffs entitled to cause the legal representatives of defendant number 2, 3 and 4 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 100 and stated that, the legal representatives of defendant number 2, 3 and 4 should join the suit as party as per the provision of order 22 rule 4 of code of civil procedure and order 6 rule 17 of code of civil procedure.

5. It is stated in the pursis vide exhibit 90 that, defendant number 3 died on 18-04-2023. On perusal of death certificates of defendant number 2, 3 and 4 vide exhibits 93, 94 and 95, it becomes crystal clear that, defendant number 2 namely Pandurang Dattatray alias Dattu Bhade died on 20-10-2020, defendant number 3 Kerba Dattatray alias Dattu Bhade died on 18-04-2023 and defendant number 4 namely Arjun Dattatray alias Dattu Bhade died on 10-07-2023. Thereafter, the application for causing the legal representatives of deceased defendant number 2, 3 and 4 is filed on 06-11-2023. On perusal of article 120 of The Limitation Act, it reveals that application to have legal representatives of deceased defendant number 2, 3 and 4 made as party to the suit shall be filed within period of 90 days from the date of death. On perusal of article 121 of Limitation Act, it appears that application for setting aside an abatement is to be made within period of 60 days from date of abatement. Application vide exhibit 96 is filed for setting aside abatement and it is allowed. Application vide exhibit 98 is filed for condonation of delay and it is allowed.

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 defendant number 2, 3 and 4 to be made party to the suit. In present suit, defendant number 2 namely Pandurang Dattatray alias Dattu Bhade died on 20-10-2020, defendant number 3 Kerba Dattatray alias Dattu Bhade died on 18-04-2023 and defendant number 4 namely Arjun Dattatray alias Dattu Bhade died on 10-07-2023. I have also perused article 120 of the Limitation Act. The right to sue does not survive against surviving defendants alone. 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 cause on record the legal representatives of deceased defendant number 2, 3 and 4. 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 100 is allowed.
2. The legal representatives of deceased defendant number 2, 3 and 4 as stated in the application vide exhibit 100, shall be made as party (defendants) to the suit.

3. The suit shall be amended accordingly on or before next date by plaintiffs and the plaintiffs are to file copy of amended plaint on or before next date. The suit shall proceed further in accordance with provisions of law.

Shrigonda
Date – 20-11-2023

Sd/-
Smt. K. A. Katkar
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. 17/2011
Name of Stenographer	:-	Smt. S. V. Jadhav
Court Name	:-	Smt. K. A. Katkar, Jt. Civil Judge, J.D, Shrigonda.
Date of Decision	:-	20-11-2023
Order signed by P.O. on	:-	20-11-2023
Order uploaded on	:-	20-11-2023