

MHAU050039312010



Kazi Musa (died) through L.R's. and other V/s. Haroon (died) through
L.R's and others

ORDER BELOW EXH.155
(Order passed on 06-02-2023)

This application is filed on behalf of L.R's of plaintiff no.4 to permit them to bring the L.R's. of the plaintiff No.4 on record in the matter.

2. It is the contention of that, before demise of plaintiff No.3 since 2010, the plaintiff No.1 Musa used to pursue the proceeding of the present suit, thereafter the said plaintiff started to remain bedridden at his native Latur due to his ill-health. The plaintiff No.1 is unable to move from bedridden since 2017, therefore the plaintiff No.2 started visiting at Latur to meet him once in 3 to 4 months. He lastly visited the house of said plaintiff in the month of April 2017. But thereafter due to being busy in proceeding of this suit, as well as another sister suit bearing Spl.C.S.No.01/2013 and thereafter being busy in earning lively hood, he could not visited Latur to meet plaintiff No.1. On 09-03-2020, when he visited the house of plaintiff No.4, at that time,

he got information that, he is expired on 22-06-2017. The right to sue is available to L.R's. of the deceased plaintiff No.4 and therefore to protect their right, it is necessary to allow them to join as legal heirs of plaintiff No.4 in the matter, otherwise L.R's. will have to face multiplicity proceeding. Lastly, prayed to allow the application.

3. Only defendant Nos.10 and 11 have resisted the application on the ground that, the name of the plaintiff No.4 in the suit on Exh.34, 89, 128 and Exh.144 are mentioned as Yasin and signature is on record also by that name. In affidavit also name of said person is shown as Yasin Pir Mohammad. In all documents produced on record the name of plaintiff No.4 is referred as Yasin Pir Mohammad and suit is proceeded by plaintiffs on that name. However, for the first time, the plaintiffs are stating the name of plaintiff No.4 as a Yamin Pir Mohammad. Further, the date of death of said person is referred as 22-06-2017. There is delay of more than four years. Application is not filed within time. It is filed at belated stage, only to prolong the matter and to harass the defendants. If application is allowed, it would cause injustice on the defendants. Lastly, prayed to reject the application.

4. Perused the application and say filed thereon. Considering the nature of the suit, it is for specific performance

of contract and perpetual injunction against the defendants. Further, considered point raised by the defendants in their say, I am of the considered view that, said point would not considered without evidence on record. If the points involved in the suit are considered, I am of the considered view that, to adjudicate the matter on merits effectively and finally, it would be just and proper to entertain the application. Further, no prejudice would finds to the other side, if application is allowed, because they have also opportunity to file their evidence on that point. Consequently, I pass following order.

ORDER

1. Application at Exh.155 is allowed as under.
2. Plaintiffs to bring the L.R's. of the plaintiff No.4 on record without fail and to carry out necessary amendment in the suit and to file copy of amendment plaint accordingly.
3. Plaintiffs to comply.

Date : 06-02-2023

(R. M. Karade)
Jt. Civil Judge Senior Division
Vaijapur.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer : Shri. G. M. Zade.
(Stenographer Grade-II)
Court : Shri. R. M. Karade
Jt. C.J.S.D., Vaijapur.
Date : 06-02-2023
Order signed by the presiding officer on : 07-02-2023
Order uploaded on : 07-02-2023