

Order below application at Exh.10 in R.C.A. No.49/2010

Through this application the appellant-Dilip Shyamlal Jaiswal (appellant no.1(A)) is seeking to transpose other legal representatives of deceased original appellant as respondent in this appeal. The application goes unchallenged.

2. Heard learned Advocate for the appellant no.1(A). The respondent & his Advocate remaining absent when called repeatedly.

3. R.C.S. No.67/2007 came to be filed by one Shyamlal Ramlal Jaiswal. He preferred the present appeal against the dismissal of the suit. During the pendency of this appeal Shyamlal Ramlal Jaiswal died. It appears that he is having four legal representatives/heirs, as mentioned in the application vide Exh.8. But out of them only Dilip Shyamlal Jaiswal appeared & he came to be added as (appellant no.1(A)). But other three legal representatives/ heirs did not turn up despite services of due notices. Those three legal representatives/heirs of deceased Shyamlal are supposed to be added as appellants.

4. Now the question arises is whether it would be just to continue with the present appeal in absence of other legal representatives who did not turn up in the proceedings? Or to

transpose them as defendants/respondents ?.

5. In this regard, it is pertinent to note that, the suit in question came to be preferred for eviction & recovery of possession of tenanted property. Apparently there is no dispute as to the status of the original plaintiff i.e. deceased Shyamlal. The present appeal is a continuation of the said suit. As discussed above, the sole plaintiff has died during the pendency of the suit. Few of his legal representatives/heirs are not responding despite of notice. Those un-turned legal representatives/heirs are supposed to be added as appellants in place of deceased Shyamlal. Therefore in this circumstance, in my view, it would be just to add them and transpose them as defendants/respondents. I say so because, it would not be just to proceed with the appeal in their absence. On the other hand, if they will added as respondents/defendants then there would be occasion to issue notices & summons them. So also their rights, interest & claims will be able to be considered as the time of adjudication of dispute.

6. It is well settled that, The discretion under the **sub-rule(2) of Rule 10, Order 1**, can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add

anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under **Order 1 Rule 10(2)** of the **Code**, the court will of course act according to reason and fair play and not according to whims and caprice.

7. In view of present contingency it would be just & necessary to add & transpose other three legal representatives/heirs of deceased sole plaintiff Shyamlal as defendants/respondents. In my view it would be just in the interest of those legal representatives/heirs & it would be fair play and not according to whims and caprice.

8. Accordingly, for above discussed reasons, the application is allowed in following terms.

ORDER

1. The application is allowed.
2. Subhash Shyamlal Jaiswal, Ashok Shyamlal Jaiswal, Sou. Vijaya Shyamlal Jaiswal, be added as party defendant nos.2,3 & 4. (i.e. Respondent Nos.2, 3 & 4) respectively.
3. Appellant to carry out necessary amendment, forthwith.

4. Notice/summons be issued to newly added defendants/appellants.

(Dictated and pronounced in open Court)

Sd/-

Date :17-07-2019

(D.L.Nikam),
Adhoc District Judge-1,
Khamgaon.

I affirm that the contents of this PDF file order are correct word to word as per the original order.

Name of Court: Adhoc District Judge-1, Khamgaon.

Name of Steno: S.T. Bedi.

Date: 17.7.2019.