

Order Below Ex. 69.
(Passed on 26.04.2021)

Perused the application and say. Heard both sides. Adv. for plaintiffs and defendant have filed pursis below Ex. 72 and 73 respectively in respect of their hearing. The argument of both parties was concluded on 07/04/2021. It is pending for order. In view of S.O.P. of Hon'ble High Court dated 16/04/2021, it has been directed to pass the order in which the argument of both parties is completed. Advocate for the defendant submitted that plaintiff no. 6 Govind Sukhdeo Kalore, who is one of Trustee of plaintiffs trust has expired long back. The plaintiffs trust has not made clear that who has appointed a new trustee in the place of plaintiff no.6. Even his name has not deleted from the suit. In such circumstances, the cause of action cannot be separated. The suit needs to be abated. Therefore, he submitted to allow the application.

2. Per contra, advocate for the plaintiffs submitted that there is no dispute about the death of plaintiff no.6 on 18/11/2020. He submitted that it is the part of internal administration of the plaintiffs trust in respect of the appointment of new trustee in the place of deceased plaintiff no.6. He submitted that the change report is pending in the office of Charity Commissioner, Buldana. The entire suit will not be abated. Moreover, the legal heirs of plaintiff no. 6 cannot be made party in the present suit as they have not been appointed as trustee. He draws my attention to the fact that plaintiff no. 6, who is

representing the plaintiffs trust. The suit has not filed in his individual capacity. His role is limited as to the trustee of the plaintiffs trust. Therefore, he submitted to reject the application.

3. I consider submissions of both advocates. To decide this application, I wish to be guided by Order 22 Rule 1 and 2 of the Code of Civil Procedure (hereinafter CPC).

1 . No abatement by party's death if right to sue survives— The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

2 . Procedure where one of several plaintiffs or defendants dies and right to sue survives— Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to the effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

4. O.22 R. 1 of the C.P.C. states that the death of the plaintiff or defendant shall not cause the suit to abate if the right to sue survives. The expression “right to sue” has not been defined anywhere in the C.P.C, but it means that right to ask for relief. O.22 R.2 of the C.P.C lays down that where there are more plaintiffs or more defendants than one and any of them dies, and the right to sue survives either in the favour of remaining plaintiff or plaintiffs or against the remaining defendant or defendants alone and entry will be made by the Court that the party is dead and it will proceed with the disposal of case before it.

5. Considering the above legal position, in the present matter plaintiff no. 6 is died on 18/11/2020 and which is not disputed by the plaintiffs trust. In fact, it has been informed to the Court by virtue of the pursis at Ex. 72 in respect of death of plaintiff no.6. The present suit is filed by Gajanan Maharaj Sansthan, who is trust maintaining the Samadhi of Shri. Sant Gajanan Maharaj. The rest of plaintiffs are trustees of this trust. The trustees are representing the trust. Needless to say that the legal heirs of deceased plaintiff no.6 cannot be made party by default. It requires the change report. Moreover, this suit is not filed by plaintiff no.6 in his individual capacity. He is representing to the trust. It has been made clear by the plaintiffs trust that the change report is pending in the office of Charity Commissioner, Buldana.

6. No doubt, it is part of trust to appoint a new trustee to represent by taking the appropriate procedure in the office of Charity Commissioner. This suit is filed for the relief of possession of the shop premises under the provisions of Maharashtra Rent Control Act, 1999. The right to sue i.e. right to claim the relief is survives in the remaining plaintiffs. Thus, in view of provision of O.22 R.1 of the C.P.C, the suit cannot be abated in its entirety. But here in this matter plaintiff no. 6 is died. The right to sue survives in rest of plaintiffs therefore it would be proper to delete the name of plaintiff no.6 in the array of plaintiffs as per O.22 R. 2 of the C.P.C. Thus, I am of the opinion that by virtue of the

death of plaintiff no.6, the entire suit could not be abated. Thus, it would be proper to direct the plaintiffs to delete the name of plaintiff no.6 and it would not cause any serious prejudice to the defendant. In the result, I pass following order.

Order

1. The application is rejected.
2. The plaintiffs shall delete the name of plaintiff no.6 in the array of plaintiff.
3. The plaintiffs shall carry out necessary amendment within 14 days from today.
4. The application is disposed of accordingly.

Place : Shegaon.
Date : 26/04/2021.

Sd/-
(V. V. Kulkarni)
Civil Judge Junior Division
Shegaon, Dist. Buldana.

CERTIFICATE

I affirm that the contents of this PDF file are same word for words as per original.

Name of Steno : A.I. Shastri.
Name of Court : CJJD. Shegaon.
Upload date : 28.04.2021.