

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, GONDIA.

REGULAR CIVIL APPEAL NO. 97/2014
CNR :MHGO010004352014

RAMESH ADWANI .VS. ASHOK LONGANI + 1

ORDER BELOW EXH.23.

(Passed on this 21st of February 202)

1. This application is filed under XXII Rule 3 read with Order XXII Rule 11 of the Code of Civil Procedure to bring legal representatives of deceased/appellant on record.
2. It is submitted that the sole appellant i.e. Ramesh Adwani died on 15.11.2022. This fact is also intimated to the Court on 19.11.2022. After the death of plaintiff the right to sue survives by his legal representatives, the names of which are mentioned in para No.3. Therefore, it is requested to bring the names of the said legal representatives on record. It is submitted that the application is filed within the period of 90 days i.e. before 13.02.2023.
3. Learned advocate Shri. N. R. Machade for the respondents opposed the application on the ground that the application is not in proper form. In the said application, the applicant did not disclose whether the right to sue survives for them to contest the present appeal and in the application only it is mentioned to bring legal heirs of the deceased/appellant on record. Hence, urged to reject the application.

4. Heard learned advocate Shri V. A. Sheth for the applicant-legal representatives and learned advocate Shri N. R. Machade for the respondents.

5. The applicant Gulshan s/o Ramesh Adwani placed on record the death certificate of the deceased/appellant Ramesh Adwani below list Exh.24. From the said death certificate, it reveals that the appellant is died on 15.11.2022. Thereafter, this application is filed by the present applicant on 03.01.2023. Law requires that the application to bring legal representatives on record must have filed within the period of 90 days. In view of the death certificate, the appellant died on 15.11.2022 and therefore the application is filed well within the period of 90 days. In fact, no order of abatement of the proceeding is passed.

6. Learned advocate for the respondents raised crucial objection that the application is not in proper form and in the application nowhere it is disclosed that the right to sue survives in favour of the legal representatives of the deceased/appellant to contest the appeal. It is argued that the applicant must have filed application for permission to seek special leave of the Court and then to bring legal heirs on record.

7. Per contra, learned advocate for the applicant argued that no such application is mandated under Order XXII Rule 3 of C.P.C. Learned advocate for the applicants relied on the judgment of the Hon'ble Bombay High Court (Bench at Panaji-Goa) in the

matter of Anthony D'SA s/o Valentino Antonio D'SA .vs. Daria Lino D'Sae Dias w/o Casmiro Dias, reported in 2008(3) Mh.L.J. 651, wherein it is held that “*The procedure requires an application for the making of legal representatives of the deceased plaintiff or defendant a party to the suit. It does not say who is to present the application. Ordinarily it would be the plaintiff (or his heirs?) as by the abatement of the suit the defendant stands to gain. However, an application is necessary to be made for the purpose (emphasis supplied)*”.

8. In view of above pronouncement, the applicants are required to make an application to bring legal representatives of the deceased/appellant on record. Admittedly, this present application is filed under Order XXII Rule 3 read with Order XXII Rule 11 of C.P.C. No doubt, the application is filed only by one of the legal representative of the deceased/appellant, however the other legal representatives marked their presence before the Court through the ‘Vakalatnama’. In the application it is also specifically mentioned that right to sue survives in respect of the legal representatives. Considering the nature of dispute and the fact that the deceased/appellant has challenged the judgment and decree of the Trial Court, there is reason to believe that the right to sue survives for the applicants being legal representatives of the deceased/appellant. There is no specific provision under Order XXII Rule 3 read with Order XXII Rule 11 of C.P.C. of seeking permission to special leave of the Court to bring legal heirs on

record. Moreover, in view of the aforesaid judgment (*supra*) filing of the application to bring legal heirs of the deceased/appellant on record will suffices purpose. As the applicant wants to continue with the present appeal being legal representatives of the deceased/appellant, it is just and proper to permit the applicants to be joined as legal representatives of the deceased/appellant on record and to contest the appeal. Consequently, the application needs to be allowed. Hence, order.

ORDER

- 1) Application Exh.23 is allowed.
- 2) The applicants Gulshan s/o Ramesh Adwani, Geeta w/o Hitesh Nagdev and Renu w/o Ramchand Bhojwani are permitted to them being legal representatives of the deceased/appellant on record as appellants and to contest the appeal.
- 3) Necessary amendment be carried out in the appeal within 14 days of this order.
- 4) Accordingly, the application Exh.23 is disposed of.

Sd/-

(A. T. Wankhede)

Date: 21.02.2023.

Principal District Judge, Gondia.