

MHJN05-000616-2019



ORDER BELOW EXH.NO. 52
(Passed on 26.02.2024)

- 1] By this application, the plaintiff prayed to bring legal representatives of deceased plaintiff on record.
- 2] Read application and say. Heard both sides. Perused record of the case.
- 3] It is contended by the applicants that they are legal representative of deceased plaintiff. Their father filed present suit for perpetual injunction, mandatory injunction and possession in respect of property Gat No. 142/8 area 0.28 HR. Their father subsequently claimed possession of land from western side of Gat No. 142/8 by demolishing construction of Gajanan Mangal Karyalay. Hence, they alleged that though their father is died but, their right to sue is survive against the defendant. Hence, they prayed to allow them to continue with the suit by taking them on record as legal representatives of deceased plaintiff. Accordingly, they prayed to allow the application.
- 4] Vide reply (Exh.55) defendant resisted the application alleging that the suit was filed for injunction. The plaintiff has no nexus with the Gajanan Mangal Karyalay. In fact, there is no certainty about legal representatives of deceased plaintiff. So also, as the suit was filed for simplicitor injunction and the plaintiff is died, his legal representatives have no right to proceed with the suit

against the defendant. Hence, he prayed to reject the application.

5] On perusal of record, it appears that initially the deceased plaintiff had filed suit for perpetual injunction restraining defendant from causing obstruction. However, later on, the deceased plaintiff came with the case and during pendency of suit, he amended the plaint and prayer with contention that the defendant made an encroachment over land of plaintiff Gat No. 142/8 from western side and constructed Gajanan Mangal Karyalay, therefore, the plaintiff amended the plaint by subsequent event and added pleadings to that effect that prayer of removal of encroachment over the land of plaintiff by demolishing the construction raised by the defendant of Gajanan Mangal Karyalay by way of mandatory injunction and also sought vacant possession.

6] Under such circumstances, it is not disputed that the legal representatives of deceased plaintiff are not inherited the suit property. It shows that after death of deceased plaintiff, certainly his legal representatives will be inherited in the suit property and the cause of action is not appears only to the extent of perpetual injunction, but, it is for removal of encroachment of demolition of construction and possession is there, therefore, certainly right to sue is survive against the defendant to the legal representatives of deceased plaintiff. The application is appears to be well within the limitation. Therefore, they are entitled to step into shoes of deceased plaintiff for proceeding with the suit against the defendant, hence, the application is deserves to be allowed. In this backdrop, I pass the following order.

ORDER

1. Application (Exh. 52) is hereby allowed.
2. The applicants are directed to add their names as legal representatives of deceased plaintiff in the cause title of the plaint and make necessary amendment..
3. Newly added plaintiff shall submit amended copies forthwith.

(Order is dictated and pronounced in open Court.)

Sd/-xxxxxxx

Place : Partur
Dated : 26.02.2024

(Liladhar D. Korde)
Civil Judge (Junior Division),
Partur.

- : C E R T I F I C A T E : -

I affirm that the contents of this Pdf file order are same word as per original order.

Name of Stenographer :- V. N. Thakur

Court Name :- Liladhar D. Korde, C.J.(J.D.), Partur

Date of dictation :- 26.02.2024

Transcript ready on :- 26.02.2024

Order signed by P.O. on :- 27.02.2024

Order uploaded on :- 27.02.2024

Sd/-xxxxxxx
(Vaibhavsing N. Thakur)
Stenographer (Grade-III)