



Chandsaheb Hasan Sutar Vs.
Tahsildarso Shirol & Ors.

The plaintiff has filed the present application under Order 6, Rule 16 and under section 151 of Civil Procedure Code for amending the suit. The defendant no.3, 4, 14 have filed their say and objected the application. The other defendants have not filed their say.

2) Heard both sides. Perused the documents on record. On perusal of the same it appears that the defendant no.2 died on 10/11/2024. Therefore, according to the plaintiff it is necessary to delete his name and insert the word 'dead' in front of his name. Moreover, according to him it is necessary to make consequential changes in the pleading. On the other hand, ld. Advocate for the defendants has submitted that in order to delete the name of party, it is necessary to file an application under Order 1, Rule 10 of Civil Procedure Code. Such amendment cannot be allowed under Order 6 Rule 16 & 17 of Civil Procedure Code or under section 151 of the Civil Procedure Code.

3) On perusal of record, it appears that on 10/11/2024 defendant no.2 died. The plaintiff has filed his death certificate on record. Moreover, the plaintiff has filed his affidavit in support of his contentions. Therefore, it appears that the plaintiff did not have knowledge of death of defendant no.2 on the date on the date of filing of suit. Moreover, it appears that in the application the plaintiff has prayed to struck out the name of defendant no.2. It means that the prayer of the plaintiff is as per the provisions of Order 1 Rule 10 of Civil Procedure Code, though the said provision is not specifically mentioned in the application. In such circumstances, the present application cannot

be rejected on the said ground. It is well settled that procedure is the handmaid of the justice. The technicalities of procedure should not override the substantive rights of the parties and the Court should act to ensure that justice is effectively and fairly administered. Therefore, it is not legal and proper to reject the application on the grounds alleged by the defendants. Moreover, the plaintiff wants to insert the word 'defendant no.3 & 4' instead of 'defendant no. 2 to 4' in the pleading. As defendant no.2 died, it is necessary to make such amendment. It appears that the proposed amendment is necessary for deciding the suit on merit.

4) If the proposed amendment is allowed no prejudice will be caused to the defendants. The proposed amendment is technical in nature. Due to the proposed amendment nature of the suit will not be change. Therefore, it is legal and proper to permit the plaintiff to carry out the proposed amendment by imposing costs on him. In the result, I pass following order-

ORDER

- (1) The application (Exh.29) is hereby allowed subject to costs of Rs.400/- to be paid to the defendant no.3, 4, 14 .
- (2) The plaintiff to carry out amendment as prayed within the period of 14 days.

Date : 20.06.2025

(P.A.Patil)
Jt. Civil Judge Junior Division,
Jaysingpur.