

MHKO070024192024

**ORDER BELOW EXH.35 IN REGULAR CIVIL
SUIT NO. 270/2024.**



Pirgonda Patil

Vs.

Babu Kale and others.

The present application is filed by the plaintiff under Order 6 Rule 17 read with Order 1 Rule 10 and section 151 of the Code of Civil Procedure for amendment of the plaint and for joining of new defendants. The defendants have filed their say (Exh.36) and objected the application.

2. Heard both sides. Perused the documents on record. On perusal of the same, it appears that the plaintiff has filed the present suit for permanent injunction wherein, it is alleged that the defendants No.1 to 20 had filed Rasta/SR/No.11/2021 against him under section 5 of the Mamlatdar's Court Act. In the said application, the defendant No.18 was the applicant. Therefore, he was added as a defendant in the present suit. However, after instituting the present suit it revealed that he died before filing of the present suit. Therefore, the plaintiff has filed the present application to join his legal heirs as the defendant No.18A to 18D and to mention the word 'dead' in front of name of the defendant No.18.

3. Learned advocate for the defendants has submitted that the defendant No.18 died before filing of the suit. Therefore, his legal heirs cannot bring on record. There is no cause of action to bring his legal heirs on record. Admittedly, the legal heirs of the person died before filing of the suit cannot be taken on record vide Order 22 Rule 4 of the Code of Civil Procedure. However, the present application is not filed under Order 22 Rule 4 of the Code of Civil Procedure. It is evident that the present application is filed under Order 6 Rule 17 read with Order 1

Rule 10 of Code of Civil Procedure. Moreover, in the application it is prayed to add the proposed persons as a defendants. On plain reading of the application, it does not appear that the present application is filed to bring the legal heirs of deceased defendant vide Order 22 Rule 4 of the Code of Civil Procedure. Therefore, it is clear that there is no merit in the submission of the defendants.

4. On perusal of record, it appears that in the present suit the rights of the plaintiff in respect of the immovable property are involved. The said rights were disputed by the deceased defendant No.18. Therefore, the heirs of deceased defendant No.18 are the necessary parties in the present suit. It is not legal and proper to reject the present application to add them as a defendants only on the ground that the present suit is filed only for permanent injunction and cause of action does not survive against heirs of deceased defendant No.18. As discussed above, in the present suit the rights of the plaintiff in respect of the immovable property are involved. Therefore, it cannot be held that there is no cause of action against the heirs of defendant No.18. Hence, there is no merit in the contention of the defendants that there is no cause of action against the heirs of defendant No.18.

5. In view of above discussion, it is clear that the defendant No.18 is died. Therefore, it is necessary to insert the word 'dead' in front of his name. Moreover, it is necessary to join his heirs as a defendant No.18A to 18-D by way of amendment under Order 1 Rule 10 of Code of Civil Procedure. Hence, the application deserves to be allowed. In the result, I pass following order :-

ORDER

(1) The application (Exh.35) is allowed.

- (2) The plaintiff is permitted to insert the word 'dead' in front of name of the defendant No.18 and also permitted to join defendant No.18A to 18D as prayed within the period of 14 days.
- (3) The plaintiff shall file copy of amended plaint.

Date : 01.01.2026.

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