



**ORDER BELOW EXH. 90 and 91**

1) By virtue of this application, applicants i.e. 1)Imtayaj Mohammad Raut 2)Ashiq Husen Mohammad Raut and 3)Fatima Irfan Mulla prayed to substitute them in place of deceased plaintiff i.e. Mohammad Ibrahim Raut being his legal representative under Order XXII Rule 3 of the Code of Civil Procedure. Application is supported by affidavit. It is worth to note that, vide order below Exh.89, delay that was caused to set aside abatement order has been condoned as well as abatement order is set-aside.

2) According to the applicants, plaintiff expired on 02/07/2020. After the death of plaintiff, applicants being legal representatives of deceased plaintiff are the necessary parties in the present suit. If applicants are substituted in place of deceased plaintiff, present suit will be decided in merits. Advocate for the applicants reiterated contents of application at the time of argument. On the above grounds, applicants prayed to substitute them in place of deceased plaintiff.

3) Defendants filed say on the overleaf of the present application and resisted the claim of applicants. According to defendants, applicants have not filed any document to show that, they are the legal representatives of deceased plaintiff. Therefore, the present application is suspicious. Defendants further submitted that, the reasons mentioned in the present application are false. Defendant prayed for rejection of applicant with heavy cost.

4) Perused the application and say. Heard both the sides. Perused the record and proceeding. It is worth to note that, present suit is filed for declaration and injunction. According to me, considering the nature of the suit, the right to sue has been survived upon the proposed legal representative of plaintiff after his death. As proposed legal representatives is ready and willing to conduct the case, in such circumstances, if they are substituted in place of deceased plaintiff, no harm will cause to defendants.

On the contrary, if the proposed legal representatives are not substituted, there will be multiplicity of litigation. Therefore, it will be just, legal and proper to substitute the name of deceased plaintiff with the name of aforesaid legal representative. Consequently, for the aforesaid reasons, I proceed to pass the following order:

**ORDER**

- 1) Application is allowed.
- 2) Imtayaj Mohammad Raut, Ashiq Husen Mohammad Raut and Fatima Irfan Mulla be substituted in place of deceased plaintiff being his legal representatives as plaintiffs in title of the plaint.
- 3) Advocate for applicant to comply the order within 7 days from the date of this order.
- 4) Cost in cause.
- 5) Application is disposed of accordingly.

Radhanagari.  
Date: 12/11/2021

( S. K. Shaikh )  
Civil Judge Junior Division,  
Radhanagari.