

CNR NO.110015042018

Order below application vide Exh.141 in RCS No. 438/2018
Faiyyaj Vs. Usman and Ors.

Perused contents of application and say thereon. Heard to both sides. Perused record and proceeding. Learned advocates for the parties submitted contents of the application and say thereon. Defendant No.11 failed to file his say. The suit is old one i.e. of year 2018. It should be proceeded further on priority basis. Therefore, the present application is proceeded further without say of defendants No.11.

2. The application discloses that, defendant No.4/2 Salim Pashamiyan Hashmi expired on 21.04.2025. He has legal heirs viz. 1. Shama Salim Hashmi, 2. Siraj Salim Hashmi, 3. Nijam Salim Hashmi and 4. Saju Salim Hashmi. The suit is for partition. The plaintiff lastly prayed for making parties to the aforesaid legal heirs of deceased defendant No.4/2. The the present and proposed defendants contended that, source of information about legal heirs is not mentioned. The application is objected.

3. However, present application is supported with affidavit vide Exh.142 whereby the plaintiff affirm that defendant No.4/2 Salim Pashamiyan Hashmi expired on 21.04.2025 and he has aforesaid legal heirs. Furthermore, the suit is for partition, separate possession and declaration that the alleged sale-deed is not binding on the plaintiff's right. Moreover, the averment in the plaint, prima-facie reveals that the plaintiff and defendants No.1 to 3 are interse relatives viz. Brothers and Sister. The defendants

denied entire claim of the plaintiff and lastly contended to dismiss the suit. Therefore and considering the rival pleadings, it makes clear that right to sue survives to the plaintiff against the aforesaid legal heirs. The present application is also filed on 03.07.2025. The defendants or the aforesaid legal heirs never raised any issue with respect to limitation for filing the present application. Moreover, death extract filed along with list vide Exh.134 reveals that defendant No.4/2 Salim Pashamiyan Hashmi expired on 21.04.2025.

4. Furthermore, whether the plaintiff will be entitled for the reliefs sought for or not will be decided after conclusion of trial and on merits. So also, the parties will have an opportunities to adduce their evidence and cross examine the witnesses. Therefore, no prejudice will cause to either aforesaid legal heirs or to the present defendants by adding the aforesaid legal heirs as parties to the suit. In such circumstances, permission will have to be granted to the plaintiff to make parties to the aforesaid legal heirs of defendant No.4/2 Salim Pashamiyan Hashmi. As a result, I pass following order.

ORDER

1. Application vide Exh.141 is allowed, the plaintiff is permitted to add aforesaid legal heirs of deceased defendant No.4/2 Salim Pashamiyan Hashmi as a parties to the suit and accordingly carry out the amendment in title clause of the plaint.

Date :09/06/2026
Place: Nilanga

(R. V. Pande)
Civil Judge, Senior Division, Nilanga,
District Latur.