

Order below Exh. - 29 in RCS No. - 158 of 2016

1] The third parties have filed this application for the addition of the present applicant nos. 1 to 6 in the array of plaintiffs as the original plaintiff is dead. The plaintiff has filed the original suit for encroachment and possession. In support of the application, the applicants have submitted that plaintiff has taken power of attorney from the present applicants and it should be mentioned in his plaint para no. 7. Their names are also mentioned in city survey record. They are the owners of the suit property. These applicants are not party to the suit and the defendants have raised the defence of non-joinder of necessary parties to the claim of the plaintiff. The plaintiff was not aware about the legal provisions and therefore this applicant were not added as party to the suit. To avoid the technicalities these applicants are required to be added as plaintiffs and therefore, the applicants have prayed for allowing the application.

2] The defendants filed their say on the present application contended that the application of the applicants are not legal. Already plaintiff has filed the suit on behalf of them as per the power of attorney and it is not maintainable. The applicants are prolonging the matter for filing such type of applications. Therefore, their application may please be rejected and heavy costs may please be imposed against them.

3] Considering the rival contentions of the parties following points arise for my determination to which I record my findings thereon for reasons to follow :

	<u>POINTS</u>		<u>FINDINGS</u>
1	Whether the applicant is required to be added as party to the suit ? In the affirmative.

2	Whether the application of the applicants deserves to be allowed ? In the affirmative.
3	What order ?	..	As per final order.

REASONS

4] Heard learned counsel for plaintiff.

5] Here in this case, the defendants have specifically taken a defence in their written statement in the suit that the suit is bad for non-joinder of necessary parties. They also take defence that plaintiff has filed the present suit on behalf of the present applicants as per their power of attorney. The original plaintiff is died on 23/02/2018. The name of these applicants are shown in City Survey extract. They are the co-sharer of the said suit property. It is an admitted position that the applicants are brother and sisters of the plaintiff who has died. Therefore, it can be said that the addition of applicant in the array of parties in the suit would be just a technicality. In such background, the omission on the part of the applicants in filing the delayed application shall not be a ground to negate their contention. However, the lapse on his part has to be condoned. Hence, I proceed to pass following order-

ORDER

- 1] Application Exh.- 29 is allowed.
- 2] The applicants are added as plaintiffs as party to the suit on or before next date without fail.
- 3] Parties to note and comply.
- 4] The names mentioned in the application below Exh. - 26 who are legal heirs of the plaintiff and the present applicants now who becomes plaintiffs shall proceed this suit simultaneously if there is no any

conflicting interest between them. If any conflict arise in future in between plaintiffs then some of them may be transported as defendants in the present suit, if required.

Chandwad
Date : 14/11/2018

(K.G. Chaudhari)
Civil Judge, J. D., Chandwad,
Dist-Nashik.