

ORDER BELOW EXHIBIT NO.28

The plaintiffs have filed instant application under Order 1 Rule 10 and Order 6 Rule 17 of the Code of Civil Procedure, 1908, for deletion of name of defendant no. 15 from caption of the plaint and for bringing legal heir of defendant no. 15 on record.

02. By this application, the plaintiffs have contended that, they have instituted present suit for possession and permanent injunction. Defendant no.15 Dastgir Kadar Mulani passed away on 16/03/2022, however, at the time of institution of the suit plaintiffs did not have knowledge about death of defendant no. 15. Therefore, plaintiffs have impleaded defendant no. 15 as party to the suit. Defendant no. 15 has passed away before institution of present suit. Legal heir of defendant no. 15 mentioned in para no. 2 of the application is necessary party to present suit. Therefore, plaintiffs prayed for bringing legal heir of defendant no. 15 on the record as mentioned in the application para no.2.

03. Defendants no. 1 to 4 have filed say on present application at Ex. 31 and submitted that, plaintiffs have not filed present application within statutory period of limitation. Mutation Entry filed by plaintiff reveals that there are six legal heirs to the defendant no. 15 therefore, present application is not tenable hence, prayed for rejection of application.

04. Heard Ld., advocate on behalf of both parties. Considering the contents of plaint it reveals that plaintiffs have not prayed any relief against defendant no. 15. Considering the nature of suit defendant no. 15 is not a necessary party to the suit however, suit can be barred by non joinder of legal heir of defendant no. 15 as name of defendant no. 15 is mentioned in the 7/12 extract of the suit property. It is the right of plaintiff against whom they will not claim relief in respect of suit property. Therefore, it would be justifiable to allow the application and delete the name of defendant no. 15 from caption of the plaint and implead Firoj Dastgir Mulani as party to the suit. Hence, I pass the following order.

ORDER

1. Application Exhibit 28 is allowed.
2. The plaintiffs are permitted to bracket name of defendant no. 15 from caption of the plaint and implead proposed defendant mentioned in the present application and shall also carry out the proposed amendment within 14 days or on next date.
3. The plaintiffs shall also file appropriate amended copy of the plaint.
4. However, in the circumstances of the case there shall be no order as to costs.
5. Issue summons to proposed legal heir of defendant no. 15.

SD/-

(A.G.Kulkarni)

Place : Daund.

Date : 02/05/2024

4th Jt. Civil Judge, Jr.Division Daund
Tal.-Daund, Dist.-Pune.

