

ORDER BELOW EXH.86 IN R.C.S. NO.141 OF 2007

Present application has been placed on behalf of plaintiffs no.3 to 6 seeking amendment in the plaint to make rectification in title clause of the suit on their majority being attained. Defendants have resisted the application by filing their say. Perused the application and say. Heard Ld. Advocates appearing on behalf of both the parties. Record of the present suit demonstrates that at the time of instituting the present suit, plaintiffs no.3 to 6 were minor as a result of which their mother (plaintiff no.2) acted as a next friend for them. It is contention of plaintiffs that as plaintiffs no.3 to 6 have attained majority, they want to proceed with a suit in their individual capacity. While ensuring about the maintainability and tenability of present application, a glance need to be kept on Order XXXII Rule 12 of Code of Civil Procedure, 1908 which prescribe the procedure to be followed by minor plaintiff on attaining majority. The provision of Order XXXII Rule 12 of Code of Civil Procedure, 1908 crystallize that a minor plaintiff or a minor not party to the suit on whose behalf application is pending shall, on attaining majority, elect whether he will proceed with the suit or application. Where he elect to proceed with the suit or application, he shall apply for an order discharging the next friend alongwith seeking leave of the court to proceed on his own name. As per said provision, the title of the suit or application shall in such case be corrected as per illustration given in said provision. Having regards to the provision of order XXXII Rule 12 of Code of Civil Procedure, 1908, it is crystal clear that mere plain application for amendment is not maintainable, if plaintiff attaining majority wants to proceed with the suit in his individual capacity, whereas the minor plaintiffs

have to file separate application under Order XXXII Rule 12 of Code of Civil Procedure, 1908 mentioning therein whether they will proceed with the suit. Moreover, there should be specific prayer in said application for discharging the next friend alongwith seeking leave of the court to proceed in his own name. If the application of the plaintiff under Order XXXII Rule 12 of Code of Civil Procedure, 1908 is allowed, as a consequential amendment, he can correct the title of the suit as per illustration given in order XXXII Rule 12 of Code of Civil Procedure, 1908. As plain application seeking amendment is not tenable, present application deserves for rejection. In result, I pass following order:

: **ORDER** :

- 1 Application stands rejected.
- 2 Plaintiffs no.3 to 6 are at liberty to place separate application under Order XXXII Rule 12 of Code of Civil Procedure, 1908.

Sd/-
(H. J. Pathan)
Civil Judge (J.D.), Ghodegaon.

Ghodegaon
Date :- 01/01/2022

CERTIFICATE

I affirm that the contents of this PDF file are word to word correct as per original order.

Name of the Steno : Shri. S. A. Belekar
Name of the Court : Judicial Magistrate(F.C.) Court, Ghodegaon
Date of order : 01/01/2022
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