

Order below Ex.103 in Spl.C.S.No.517/2011

Mr.Vishal Nandlal Gupta

.... Plaintiff

Vs.

Mr.Kishor Asavale and others.

.... Defendants

In this suit summons and notices were issued to defendants. On receiving summon report it was found that defendant no.18D died before filing of the suit. Plaintiff was not aware about this fact. Therefore, he could not make application also. Even otherwise the suit is for specific performance. Legal heirs of deceased defendants are necessary parties. If legal representatives of defendants are brought on record no loss would be caused to defendant. He has given names of legal heirs and prayed for bringing them on record.

2 Defendant no.14 filed say to the application stating that suit is filed against a dead person. Therefore, it is illegal and not maintainable. Plaintiff cannot move application under O.1 R.10 CPC for adding legal heirs of defendant. Application is time barred. Hence, prayed for rejection of the application.

3 Heard argument of both the advocates.

4 According to Id advocate for plaintiff, he came to know about death of defendant after receiving summons report. His legal representatives are necessary parties as per section 21(1) of Limitation Act. He relied upon-

Karuppaswamy and others V. C.Ramamurthy AIR 1993 Supreme Court 2324, wherein it was observed that-

“Suit filed against dead person. Plaintiff

becoming aware of defendant's death
from remark on returned summons.
Seeking impleadment of Lrs of defe-
ndant, promptly thereafter. Entitled
to invoke proviso to S.21(1)”

5 Ld advocate for defendants argued that suit is not maintainable against dead person. This application is not filed u/s 21(1) of Limitation Act. This application is under O.1 R.10 CPC. There is also delay in filing application. There is specific provision. He relied upon-

Madhukar Ramchandra Keni Vs. Vasant Jagannath Patil and Ors. 2013(3) ALL MR 689, wherein it was observed that-

“Abatement of suit. Court has no jurisdiction to substitute heirs of original plaintiff by taking recourse to provisions of O.1 R.10”

This ruling is with respect to substituting plaintiff for abatement of suit. Section 21 of Limitation Act will come into play after adding new plaintiff or defendant in a suit to show its effect on the suit.

6 In the application plaintiff stated that as per bailiff report Ex.62 he came to know about death of defendant no.18D. Defendant no.18D died on 23/02/2011. On perusing record, it appears that bailiff report Ex.62 is dated 18/08/2012 while this application is filed on 05/12/2013. Thus, application itself is not filed within limitation even from the date of knowledge mentioned by plaintiff. Plaintiff has not even made

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application for condonation of delay alongwith this application. Hence, application is rejected.

Panvel
Date- 06/11/2015

(Chitra Hankare)
Civil Judge, Sr.Division, Panvel.