

Regular Civil Suit Number 26/2019

CNR Number MHRT- 06-000197-2019

Pushpa Sonu Jadhav

..... Plaintiff

Versus

Uttama Vishanu Salvi

..... Defendants

ORDER BELOW EXHIBIT 34

- 1) The plaintiff has moved the application vide exhibit 34 for amendment of plaint. She has stated that defendant number 19 died on 23-08-2019. Her legal representatives are party to suit since beginning. Hence word ' since deceased ' is to be inserted.
- 2) The defendants have raised strong objection. Therefore the application is to be rejected.
- 3) I have perused application vide exhibit 34 and say of plaintiff. I have heard both sides at length. The following points arise for my determination.

Sr. No.	Points	Findings
1.	Whether proposed amendment will change nature of suit?	No
2.	Whether proposed amendment is necessary for the purpose of determining the real question in controversy between parties?	Yes
3.	Is Plaintiff entitled for relief of amendment?	Yes
4.	What is order?	The application is allowed.

Reasons

As to point number 1 to 4 –

- 4) The point number 1 to 4 are interlinked with each other. I have clubbed point number 1 to 4 together and discussed accordingly. The present suit is for partition & perpetual injunction. I have perused the provision of Order 22 Rule 4 of Code of Civil Procedure. It reveals that when one of two or more defendants dies and right to sue does not survive against the surviving defendants alone, the court shall on the application made in this behalf shall cause the legal representatives of deceased defendants to be made party to the suit. In present suit, defendant number 19 died on 23/08/2019. The right to sue does not survive against surviving defendants alone. In present suit, legal representatives of defendant number 19 are already party to the suit since beginning. I have perused death extract of defendant number 19 vide list exhibit 37. Therefore it is necessary to insert the word since deceased against her name in the plaint. In order to enable the court to adjudicate effectively, completely, to settle all the questions involved in the suit, and in the interest of justice, it is necessary to allow the application. In the result, the following order is passed.

ORDER

- 1) The application vide exhibit 34 is allowed.
- 2) The suit shall be amended accordingly on or before next date and the plaintiff must file copy of amended plaint forthwith. The suit shall proceed further in accordance with provisions of law.

- 3) There shall be no order as to cost, after considering the facts and circumstances of the present suit.

Dapoli
Date – 28/01/2020

Sd/-
Kirti A. Katkar
2nd Joint C. J. J. D, Dapoli