

ORDER BELOW EXH.65 IN R.C.S.NO.23 OF 2011

- 1) The plaintiff filed this application seeking permission to exempt him from bringing the legal heirs of deceased defendant No.2 on record as per Order XXII, Rule 4(4) of the Code of Civil Procedure, 1908.
- 2) Defendant No.1 resisted this application by filing the say on the application.
- 3) The plaintiff submitted that defendant No.2 was died on 13/12/2016. He filed his written statement at Exh.16 but he did not contest the suit. Further, he did not appear before the Court after filing his W.S. and he did not contest the suit. Therefore, in view of provisions of Order XXII, Rule 4(4) of the Code of Civil Procedure, 1908, there is no need to bring the legal heirs of deceased defendant No.2 on record. Hence, the plaintiff filed this application and he prayed for exemption from bringing legal heirs of deceased defendant No.2 on record.
- 4) Defendant No.1 resisted the application on the ground that there is no affidavit in support of the written statement of defendant No.2. On perusal of signatures on the written statement, it does not become clear of whose signatures are appearing on the written statement. Legal heirs of defendant No.2 are required to be brought on record. Therefore, defendant No.1 sought rejection of the application.
- 5) Perused the record.
- 6) Heard Ld.Adv. Shri. Y.R. Patkar for the plaintiff and Ld.Adv.L.G.Jedhe for defendant No.1.

7) Considering the rival contentions raised in the application and say, and after hearing both the parties, the following points arise for my consideration. These points are mentioned here-in-below along with my findings on these points as follows:

POINTS

FINDINGS

1) Whether the plaintiff is entitled to seek permission to exempt him from bringing the legal heirs of deceased defendant No.2 on record?

.....**Yes.**

2) What order?

.....**Application is allowed.**

REASONINGS

As to point No.1:-

8) On the perusal of death extract at Exh.73, it reveals that defendant No.2 died on 13/12/2016. On perusal of record, it reveals that defendant No.2 filed his written statement at Exh.16 on 03/05/2011 whereby he admitted the suit claim. Defendant No.1 vide say raised objection regarding the signature of defendant No.2 appearing on written statement at Exh.16. However, this written statement was read and recorded by my Ld. Predecessor-in-office on 03/05/2011. At that time, and thereafter till the filing of say on this application, defendant No.1 never raised objection regarding this written statement and signature of defendant No.2 on it. Therefore, there is no substance in the objection raised by defendant No.1.

9) On perusal of written statement of defendant No.2, it becomes clear that he admitted the suit and he never contested the suit. On perusal of Roznama, it reveals that defendant No.2 did not appear and contest the suit after filing his written statement at Exh.16 on 03/05/2011.

10) On reading the provisions of Rule 4 of Order XXII of the Code of Civil Procedure, 1908, it reveals that exemption of substituting the legal representatives of deceased defendant may be granted even after filing of the written statement if such defendant failed to appear and contest the suit at the hearing. Therefore, considering this provision, the plaintiff is exempted from bringing legal heirs of deceased defendant No.2 on record as defendant No.2 did not contest the suit. Hence, I answer point No.1 in the affirmative.

As to point No.2:

11) Considering the above reasonings, I pass following order.

ORDER

- 1) Application of the plaintiffs at Exh.65 is allowed.
- 2) The plaintiff is hereby exempted from bringing the legal heirs of deceased defendant No.2 on record.
- 3) The suit will proceed further.

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**Date: 10/09/2018.
Place:Lanja.**

**(D.M.Hinglajkar)
Civil Judge (J.D.),Lanja,
Dist.Ratnagiri**