

**CNR No. MHSI070000622009****Order passed below Exh. No.168  
in R.C.S. No.25/2009**

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This is an application is filed by the plaintiff to strike out name of the defendant no.6 and 7.

2. The plaintiff has contended that, defendants no.6 and 7 were died. The plaintiff tried to search the legal heirs of the deceased defendants no.6 and 7, but he could not find it. It is further contended that deceased defendants no.6 and 7 are not necessary parties. Their names are recorded in a 7/12 extract of the suit party, therefore, they were made party in the present suit. The plaintiff has not claimed any relief against defendants no.6 and 7. Moreover, defendant no.5 is a sister of defendant no.6 and daughter of defendant no.7. She is already party of the suit. Therefore, it is necessary to strike out name of the defendants no.6 and 7.

3. The defendants have resisted the application by filing say at **Exh.170**. It is contended that it would be not just and proper to strike out name of deceased defendant no.6 and 7. The application is not legal. Therefore, the application is liable to be rejected.

4. Heard both the parties. On perusal of the plaint, it appears that the plaintiff has filed the present suit for mandatory and perpetual injunction against the defendants no.1 to 4. The plaintiff has not claimed any relief against the deceased defendants no.6 and 7. The deceased defendant no.6 and 7

neither necessary party nor proper parties of the suit. As per Order 1 Rule 10(2) of the Code of Civil Procedure, the court may at any stage of the proceeding either upon or without the application of either party and on such term as may appear to the court to be just, order that name of any party improperly joined, whether as a plaintiff or defendant be struck out. In the present suit, deceased defendants no.6 and 7 improperly joined as a defendant. Their presence was not required to adjudicate upon and settled all the questions involved in the suit. Therefore, it would be just and proper to strike out name of the deceased defendant no.6 and 7 from the suit. Accordingly, the application at Exh.168 is hereby allowed and I pass following order.

#### ORDER

1. The application at Exh.168 is hereby allowed and name of deceased defendant no.6 and 7 is hereby strike out from the plaint.
2. The plaintiff shall carry out necessary amendment on or before next date and provide amended copy of plaint to the defendants free of Costs.

(Pronounced and dictated in open Court.)

Date - 06/06/2023

Mahesh R. Devkate  
Jt. Civil Judge Jr.Dn., Malvan.