



CNR No. MHSI070001412020
Order passed below Exh. No. 93
in R.C.S. No. 20/2020

Defendant No.51 is reported to have died on 28/02/2014. Hence the plaintiff has made this application to bring the legal representatives of deceased defendant No.51 on record.

2) The defendants have filed their say on overleaf of the application and prayed necessary order may be passed.

3) Perused record. Heard both sides.

5) It appears from the perusal of the record that defendant No.51 died on 28/02/2014 i.e. prior to institution of the suit. It will be apt to refer to the judgment of the Hon'ble Supreme Court in ***ZALAVADIYA Versus ZALAVADIYA (2017) 9 Supreme Court Cases 700***, in which it is held as under;

16. In the matter on hand, though the trial court had rightly dismissed the application under Order 22 Rule 4 of the Code as not maintainable at an earlier point of time, in our considered opinion, it needs to be mentioned that the trial court at that point of time itself could have treated the said application filed under Order 22 Rule 4 of the Code as one filed under Order 1 Rule 10 CPC, in order to do justice between the parties. Merely because of the non-mentioning of the correct provision as Order 1 Rule 10 of the Code at the initial stage by the advocate for the plaintiff, the parties should not be made to suffer. It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting

justice. Ultimately, the courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1 Rule 10 CPC speaks about judicial discretion of the Court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add anyone as a plaintiff or defendant if it finds that such person is a necessary or proper party. The Court under Order 1 Rule 10(2) of the Code will of course act according to reason and fair play and not according to whims and caprice.

6) From the above citation it is crystal clear that even when a person is dead prior to institution of the suit his legal representative can be brought on record under *Order 1 Rule 10 CPC*. Though this application is made under *Order 22 Rule 4 of the Code*, still this application(Exh.93) can be treated under *Order 1 Rule 10 CPC*.

7) Admittedly the defendant No.51 is reported to have died on 28/02/2014. Her death certificate is on record vide list Exh.95. The suit is for partition, separate possession, perpetual injunction and damages. The subject matter of the suit is immovable property. After the death of defendant No.51, her interest in the immovable property developed upon the proposed legal heirs. Therefore proposed legal heirs are necessary parties to the suit. Hence application deserves to be allowed. At the same time, the inconvenience caused to the defendants needs to be compensated by imposing a cost upon the plaintiff. Thus, following order;

ORDER

1. The application Exh. 93 is allowed, subject to Costs of Rs. 300/-.
2. On payment of Costs, the legal representatives of deceased defendant No.51 be brought on record.
3. The plaintiff should file amended copy on record, on or before next date
4. The Costs amount shall be paid by the plaintiff to the defendants.

Pronounced and dictated in open Court.

Date - 06/05/2025

M.K.Fakih
Civil Judge Jr.Dn., Malvan.