

R.C.S.No.113/2007.

Bapuso Baburao Chougule etc.3

Vs

Sheetal Bhupal Khanjire etc.3

CNR-MHSN02-00122-2007.

ORDER BELOW EXH.142.

Perused the application and say filed by at Exh.144.

2. Heard learned advocate for both sides.

3. It is the averment of plaintiff that, the plaintiff no.3 Smt. Kusum Baburao Chougule expired on 17/03/2022. It is the averment of plaintiff that, plaintiff no.1, 2 and defendant no.2 are the legal heirs of the deceased the plaintiff no.3 Smt. Kusum Baburao Chougule. It is the further averment of plaintiff that, as legal heirs of deceased plaintiff no.3 are already on record hence, the present suit does not abate. Therefore, the amendment sought is merely formal nature and will be carried out only for avoiding any formal or technical defect in the suit. Hence, prayed for allowing the application for carrying out necessary amendment.

4. The defendant have filed say at Exh.144 and objected the application on ground that, it is not true that plaintiff no.1, 2 and defendant no.3 are the only legal heirs of deceased plaintiff no.3. It is further contended that, the plaintiff has not brought all the legal heirs of deceased on record and therefore, the suit abates. Hence, prayed for rejection of the application.

5. Perused the record. It is the averment of plaintiff that, the plaintiff no.3 Smt. Kusum Baburao Chougule expired on 17/03/2022. In support the plaintiff has filed death certificate of deceased plaintiff no.3 on record at Exh.145. Perusal of aforesaid death certificate shows that, the plaintiff no.3 has expired on 17/03/2022. The present suit has been filed for declaration, mandatory injunction and perpetual injunction with respect to immovable

property. It is the settled position that, the suit in respect of immovable property does not tend to abate on the death of either parties. Furthermore, although the defendant has objected the present application on ground that, all the legal heirs of deceased plaintiff no.3 has not been brought on record, but defendant in support of their contention have not filed the names and details of such legal heirs which have not been brought on record by the plaintiff. Therefore, in such circumstances the aforesaid contention of defendants cannot be accepted. It appears that, plaintiff no.1 and 2 along with defendant no.3 are already party to the suit. It is a settled position of law that, as the legal heirs of deceased are already a part of suit proceedings in such situation the suit does not tend to abate and also no law of limitation becomes applicable. Thus, the proposed amendment will not cause any prejudice to defendant and it appears to be a formal amendment. Therefore, there remains no hesitation in my mind to grant permission to carry out the proposed amendment for deletion of name of plaintiff no.3. In view of above discussion I proceed to pass following order;

ORDER

1. The application (Exh.142) is allowed.
2. The plaintiff is hereby directed to carry out the amendment for deletion of name of plaintiff no.3 and accordingly file amendment copy of plaintiff within 14 days of this order.

Sd/-

Place : Sangli.

Date : 22/06/2023.

(Ashish Mahipati Chavan)

4th Jt. Civil Judge, Junior Div. Sangli.

CERTIFICATE:-

“I affirms that the contents of this P.D.F Judgment order are same word for word as per original Judgment”.

Name of Stenographer	: PI.Madrasi
Name of the court	: 4 th J.M.F.C., and C.J.J.D., Sangli.
Date	: 22/06/2023
Order signed by presiding officer on	: 22/06/2023
Order uploaded on	: 26/06/2023