

ORDER BELOW EXH.40 IN SPECIAL CIVIL SUIT NO.33/2019
(Sou.Radhabai Sadashiv Rasal Vs. Shri.Rajaram Mahadev Yadav
and Ors)
(CNR NO.MHSN05-002672-2019)

Present application is filed by the LR's of deceased plaintiff for making necessary amendment in the suit as per Order VI Rule 17 r.w. Order I Rule 10 of Code of Civil Procedure.

2. According to LR's of deceased plaintiff, suit is filed for partition and perpetual injunction against defendants and during the pendency of suit, sole plaintiff namely Radhabai Sadashiv Rasal died on 07.09.2022 leaving behind legal heirs which are specifically mentioned in para No.1(A) of the application and her legal heirs wants to proceed further in the suit. According to LR's of deceased plaintiff, sole plaintiff died but, mandatory period for taking legal heirs on record is not expired. According to LR's of deceased plaintiff, proposed legal heirs are necessary party because, present suit is filed for partition and perpetual injunction. Hence, their application is within limitation. Hence, it is prayed that, application be allowed and LR's be permitted to make necessary amendment in the title clause as well as in the pleading of plaint.

3. Defendant No.1, and 3 to 6 are filed say on the same application and objected the same on the ground that, application is false and frivolous. According to defendants, LR's have not filed on record any documentary evidence to show that, they are legal heirs of deceased plaintiff. Therefore, prima-facie application liable

to be rejected. According to defendants, legal heirs did not get any right in the ancestral property of their mother and therefore, application is filed merely to harass the defendants. Hence, application be rejected with cost.

4. Following point arises for my determination and I have recording my finding thereon with the reasons stated thereunder.

Sr.No.	Point for determination	Finding
1.	Whether application is liable to allowed ?	 In the Affirmative
2.	What order ?	As per final order

-REASONS-

AS TO POINT NO.1 AND 2 :-

5. Read the application and say. Heard both sides. On perusal of record it reveals that, suit is proceeded without written statement/ex-parte against defendants and therefore, matter was pending for ex-parte hearing. However, plaintiff has not adduced her evidence. Therefore, trial of the suit has not been commenced. Considering above legal position, in case in hand, Part first of Order VI is applicable. Now, it is necessary to ascertain whether proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties.

6. LR's of deceased plaintiff filed present application by invoking provisions of Order 1 Rule 10 r.w. Order 6 Rule 17 of Code

of Civil Procedure and by present application, LR's of deceased plaintiff wants to implead themselves in place of deceased sole plaintiff. LR's of deceased plaintiff should have filed application for bringing legal heirs of deceased sole plaintiff by invoking provisions of Order 22 of Code of Civil Procedure. However, instead of invoking provisions of Order 22 of Code of Civil Procedure, LR's of deceased plaintiff, filed application under Order 1 Rule 10 r.w. Order 6 Rule 17 of Code of Civil Procedure. However, nomenclature of the application is not relevant. What is required to be seen, is the intention of LR's of deceased plaintiff by filing present application. The contents of the application on the face, prima-facie discloses that, LR's of deceased plaintiff by present application wants to implead themselves in place of sole plaintiff in the suit. It is to be noted that, according to LR's of deceased plaintiff, sole plaintiff namely Radhabai Sadashiv Rasal died on 07.09.2022 and according to applicant's, they are the legal heirs of deceased plaintiff and present application is filed on 18.11.2022. It is to be noted that, plaintiff filed present suit for partition and therefore, right to sue survives to legal heirs of deceased sole plaintiff. Copy of death extract of deceased sole plaintiff is filed on record at Exh.39/01 wherein name of deceased sole plaintiff was written as Sulochana Sadhashiv Rasal and her date of death was written as 07.09.2022. On perusal of Exh.01, it reveals that, name of sole plaintiff is described as Sou.Radhabai Sadashiv Rasal. It is to be noted that, on behalf of LR's of deceased plaintiff, affidavit of Sadashiv Bhau Rasal was filed at Exh.43 stating that, his wife

Radhabai Sadashiv Rasal filed present suit for partition and during pendency of suit, she died on 07.09.2022. Sadashiv further stated in his affidavit that, name of sole plaintiff prior to her marriage was “Radhabai” and after marriage name of sole plaintiff “Sulochana” and she was known by “Radhabai” and due to above fact, suit was filed in the name of “Radhabai Sadashiv Rasal”. Sadashiv has further stated in his affidavit that, “Radhabai Sadashiv Rasal” and “Sulochana Sadashiv Rasal” are one and same person. As stated earlier, though sole plaintiff died, right to sue survives against legal heirs of deceased plaintiff and sole plaintiff died on 07.09.2022 and present application to implead legal heirs on record filed on 18.11.2022 and therefore, present application is made within prescribed period of 90 days. As stated earlier, nomenclature of the application is not relevant and after impleading in place of deceased sole plaintiff, present legal heirs of deceased plaintiff also wants to insert certain pleading in the plaint. Considering all facts, I am of the opinion that, it is just and proper to permit applicants to implead themselves as legal heirs of deceased sole plaintiff and also to permit them to make necessary amendment in the plaint. With above discussion, no further inquiry is necessary and plaint is requires to be amended by adding applicants being legal representative as a party to the suit in place of the deceased sole plaintiff. Hence, I answer the point No.1 in the affirmative and to answer point No.2, I pass the following order:-

=ORDER=

1. Application is allowed.
2. The applicants are permitted to amend the plaint by adding themselves in the capacity of legal representative as a party to the suit in place of the deceased sole plaintiff.
3. The applicants shall carry out the amendment within 14 days from today and furnish amended copy of plaint.
4. Cost in cause.

Islampur
Date :01.09.2023

(Gautam S. Diwan.)
2nd Joint Civil Judge Senior Division,
Islampur.

-CERTIFICATE-

I affirm that the contents of this P.D.F file judgment/order are same, word to word, as per the original judgment/order.

Name of Stenographer : Sachin B. Yadav, Stenographer-II
Name of Court : **Shri.Gautam S. Diwan.**
2nd Joint Civil Judge (S.D.), Islampur.
Date of decision/typed : 01.09.2023.
Judgment/order signed by the : 02.09.2023.
P.O. on
Judgment/order uploaded on : 02.09.2023.