



RCS No.140/2023

Kamal + 1 V/s.

Bhauso + 2

ORDER PASSED BELOW APPLICATION (EXH. No. 24)

The plaintiffs have filed the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'the Code') praying for certain amendment to the plaint.

02. The plaintiffs contend that plaintiff No. 1 died on 30.09.2023. Prior to his death, on 05.07.2023, plaintiff No. 1 executed will-deed and thereby, allotted the suit property to plaintiff No. 2. Plaintiff No. 2 is already on record. Therefore, the plaintiffs want to delete the name of plaintiff No. 1 by amendment.

03. The defendants have filed their say at Exh. No. 25. They only admit that plaintiff No. 1 died on 30.09.2023. They have denied rest of the contents of the application. They contend that plaintiff No. 2 is not the only legal heir of plaintiff No. 1. There are other legal heirs i.e. two daughters of plaintiff No. 1. The alleged will-deed has not been proved in any court. Unless there is probate or letter of administration, plaintiff No. 2 can claim legal heir of plaintiff No. 1. Other legal heirs of deceased plaintiff No. 1 requires to be brought on record. Therefore, they have prayed to reject the application.

04. I perused the application, say thereon, plaint, written statement of the defendants and heard argument for the plaintiffs. The defendants are absent. None appeared for them. The record shows that on 16.08.2023 the plaintiffs have placed on record the

application. Since then it is pending. Therefore, there is no argument for the defendants.

05. The plaintiffs have filed the suit for perpetual injunction against the defendants. Today, another amendment application (Exh. No. 20) of the plaintiffs has been allowed. Thereby, the plaintiffs are praying for mandatory injunction ordering the defendants to remove the pipeline laid down by the defendants in the suit property. In view of it, the cause of action survives. The plaintiffs only want to amend the plaint by mentioning in the title clause against the name of plaintiff No. 1 “dead”.

06. It is worth here to note that the defendants have not disputed that plaintiff No. 1 died on 30.09.2023. There is also death certificate showing that plaintiff No. 1 died on 30.09.2023. Therefore, the application requires to be allowed. Moreover, it is the plaintiffs to suffer, in case, they did not bring on record necessary legal heirs of deceased plaintiff No. 1. At this stage, the said objection is not material. Therefore, the application requires to be allowed. Accordingly, I pass the following order.

ORDER

1. The application is allowed.
2. Plaintiff No. 2 do carry out the amendment, on or before next date.

Miraj
Date : 20.08.2024

(R. S. Wankhede)
Civil Judge Junior Division
Miraj

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 the Stenographer. : K. A. Udagave (Steno. - III)
Court. : Civil Judge Junior Division
and J.M.F.C. Miraj

Dictation Date : 20.08.2024
Order signed by
the Presiding Officer on. : 20.08.2024
Order uploaded on. : 21.08.2024