

Order passed below Ex.51 in R.C.S. No. 40/2019

(CNR NO. MHSO06-000416-2019)

I.A.No.06/2019

1. This is an application for amendment.
2. Perused the application and say on it. Heard learned advocates for the parties. Perused the record.
3. This is an application to take legal heirs of deceased defendant no.7 on record. It is submitted that the legal heirs of defendant no.7 are necessary to be brought on the record. Hence, amendment should be allowed as he has died on 13.08.2019.
4. The application is challenged on the ground that the suit is only for injunction. Cause of action does not survive. It is submitted that the legal heirs of defendant no.7 are not necessary parties as claim is personal. Hence, application be rejected.
5. Considering above contentions, following points arise for determination and findings are recorded thereon for reasons to follow.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether application should be allowed, as prayed ?	<u>Yes.</u>
2.	What order ?	<u>Application is allowed.</u>

REASONS

As to points Nos. 1 & 2 :-

6. The suit is not only for perpetual injunction, but also for

mandatory injunction. Whether the legal heirs of defendant no.7 are causing obstruction or not can be determined after the trial. At this stage merits in amendment application cannot be decided as true or false. The suit is not fixed for hearing. The application is filed diligently. It does not change the nature of the suit.

7. Admittedly defendant no.7 has died on 13.08.2019. The copy of death certificate is filed on the record. Hence, it is for the plaintiff to choose either to proceed against the legal heirs of defendant no.7 or not. Considering the application, it is the case of the plaintiff that injunction should be claimed against legal heirs of defendant no.7 also. Hence, application should be allowed. Hence, following order is passed.

ORDER

1. The application exh.51 is allowed.
2. The plaintiff shall carry out amendment till next date and shall file amended copies of plaint.

Date: 14.10.2019.

(M. R. Jadhav)
Jt. Civil Judge, S.D.,
Pandharpur.

CERTIFICATE

I affirm that, the contents of this PDF file order are same word to word, as per the original order.

Name of Stenographer : A.K. Vibhute

*Court : Jt.Civil Judge Senior Division
Pandharpur*

Date : 14.10.2019.

*Order signed by the
Presiding Officer on : 14.10.2019.*

Order uploaded on : 15.10.2019.