

COMMON ORDER BELOW EXH.87 & 89
IN SPL. CIVIL SUIT NO.115/2012
(Dattatray Gavhane etc Vs. Vacchala Gavhane etc)

Plaintiff no.1 has filed application at Exh.87 to condone the delay in bringing legal heirs of deceased plaintiff no.2 on the record of the case. He has also filed application at Exh.89 for grant of permission to carry out amendment as per the proposed amendment.

2) Succinctly, it is the submission of plaintiff no.1 that plaintiff no.2 was his mother. She expired on 27/10/2021. He is her legal heir already on the record of the case. With such submission he has prayed to allow the applications at Exh.87 & 89.

3) Learned Counsel for defendant nos.1 & 2 has objected the application at Exh.87. Succinctly, he has submitted that after about 6 months from the date of death of plaintiff no.2 this application has been filed. No explanation for delay has been given. With such submission he has prayed to reject the application.

4) Learned Counsel for defendant nos.1 & 2 has also objected the application at Exh.89. He has submitted that no explanation for delay has been given. With such submission, he has prayed to reject the application with cost.

5) Defendant no.3 has not filed say. Hence, I am proceeding further without his say.

6) When called both the parties and their learned Counsels are absent. I have perused the record of the case. It appears that as per plaintiff no.1 he is the legal heir of his deceased mother plaintiff

no.2. It also appears that his learned Counsel vide Exh.84 also filed a pursis that plaintiff no.1 is the only legal heir of deceased plaintiff no.2. Order 22, Rule 2 of the Code of Civil Procedure lays down that;

“Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to the effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.”

7) In this way, on going through the provisions of Order 22, Rule 2 of the CPC it appears that if on the death of a party the right to sue survives against the surviving party who is already on record, then no application for substitution of the heir of deceased party who is already on the record is necessary. In this view of the matter, in my considered opinion, it is just & proper to file the application at Exh.87 being superfluous (not needed) and to grant permission to plaintiff no.1 to carry out amendment as per proposed amendment stated in the application at Exh.89. In the result, I pass following order.

: ORDER :

1. The application at Exh.87 is filed being superfluous (not needed).
2. The application at Exh.89 is allowed.
3. Plaintiff no.1 is permitted to carry out amendment as per the proposed amendment stated in the application at Exh.89 within 7 days from today.

4. The concerned Clerk of this Court is also directed to cause an entry to that effect on the record.
5. Plaintiff no.1 is also directed to furnish copies of amended plaint to the Court and the defendants within 7 days from today.

Date : 16/11/2022

(A. P. Khanorkar)
Jt. Civil Judge, Sr. Div., Barshi.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

- a) Name of the Stenographer : R.P. Sakinal, Steno. Grade-2
- b) Court : Jt. CJSD and ACJM Court,
Barshi.
- c) Date of Judgment/Order : 16.11.2022
- d) Judgment/Order signed by
the Presiding Officer on : 16.11.2022
- e) Judgment/Order uploaded on : 16.11.2022