

ORDER BELOW EXH. No. 95 IN R.C.S. No. 61/2005.
(Arun Nanware and Ors. Vs. Waman Nanware and Ors.)

Perused the application and say filed thereon. Heard. It is the contention of plaintiffs that, defendant No. 2 Dada Tukaram Nanaware has been died dated 18.05.2021 and defendant No. 3 Aakubai Dada Nanaware has been died dated 21.03.2022. Defendant Nos. 2 and 3 have been died during pendency of the suit. Their legal heirs are already parties in the suit, they have no other legal heirs than the parties added in the suit. Therefore, plaintiff has prayed for allowing him to write the word “Deceased” before name of defendant Nos. 2 and 3 in bracket.

2] Defendant has filed his say stating that, plaintiffs have knowledge regarding death of defendant Nos. 2 and 3 but he purposefully delayed the proceeding of the case. Suit has been abated against Defendant Nos. 2 and 3, therefore, it is necessary to file the application of setting aside abatement. Further, he prayed for rejecting the application.

3] Perused record. The case is at the stage of evidence. Plaintiff is asking correction/amendment in the plaint. At this stage, it is not necessary to look into the merits of the case, while considering the application for amendment. The proposed amendment will be helpful for determining of real controversy between the parties. It is well settled that, the rules of procedure are intended to be hand made to the administration of justice. A party cannot be refused just relief because of some inadvertent mistake. If the proposed amendment is allowed, then it will not change the nature of suit. Therefore, in my view, it is necessary in the interest of justice to direct plaintiff to amend the plaint, it will help to avoid multiplicity of proceeding.

4] By the proposed amendment, no new case is made out nor would it be said that, the application is malafide. In the light of above discussion and after taking into account the facts and circumstances of the case, the proposed amendment is necessary for determination of real controversy in between the parties on merits and it will not cause injustice, prejudice to the other side. In the result, following order is passed :

:: ORDER ::

- 1] The application is allowed.
- 2] Plaintiff No. 2 is hereby directed to carry out amendment within 14 days as per Order VI, Rule 18 of the Civil Procedure Code.
- 3] Plaintiff is further directed to file amended copy of plaint and copy for decree on record.

Date : 17/10/2024.

(Smt. S.N. Gangwal-Shah)
Civil Judge Junior Division,
Mangalwedha.

CERTIFICATE

I affirm that, the contents of this P.D.F. file Order is same word to word, as per the original Order

(a) Name of the Stenographer : P.T. Jadhav

(b) Name of the Court : C.J.J.D., Mangalwedha, Dist. Solapur.

(c) Order signed by P.O. on : 17/10/2024.

(d) Order uploaded on : 17/10/2024.