

CNR NO.MHST-0500 0026 2009

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, KARAD

ORDER BELOW EXH. 115

IN

Spl.C.S. No.9/2009

Shivaji Gajananrao Patil	...Plaintiff.
<i>Versus</i>	
1. Shri. Amrut Bhikuso Patil & Ors.	...Defendants.

Advocate Shri. J. S. Patil for the plaintiff.

Advocate Shri. S. R. Nikam for the defendants.

Coram : S. B. Todkar,
C.J.S.D. Karad.
Date : 04/12/2024

ORAL ORDER :

This is an application filed by the plaintiff for bringing the legal heirs of the deceased defendant No.2 on record under Order 22 Rule 4 of the Code of Civil Procedure, 1908.

2. Perused the application and record. Heard learned advocate for the plaintiff.

3. As per the contents of present application, defendant No.2 is expired on 06/08/2020. This fact came to know to the plaintiff on 18/11/2020. Arvind, Pravin and Sandip are the only legal heirs of deceased defendant No.2. After the death of defendant No.2 right to sue survives against them therefore, plaintiff has filed present application to bring them on record.

4. It appears from the record that plaintiff has filed present suit against defendants for recovery of amount of compensation

alongwith interest etc. on the grounds specifically mentioned in the plaint. During the pendency of suit defendant No.2 expired. In support of the application the plaintiff has filed his own affidavit at Exh.116 and stated on oath that the name of persons mentioned in the application are the legal heirs of deceased defendant No.2 and after the death of deceased defendant No.2 right to sue survives against them. In support of the application plaintiff has filed death certificate of deceased defendant No.2 alongwith document list Exh.118. In spite of public notice in daily newspaper 'Dainik Prabhat' dt.09/12/2023 and service of notices by way of pasting as per bailiff report Exh.124, the legal heirs of deceased defendant No.2 failed to appear before the Court and file their say on present application. Application remained unchallenged. As per the argument advanced by the Ld. Advocate for the plaintiff at present the legal heirs of deceased defendant No.2 running the office of Dainik Punyanagari. After the death of defendant No.2 right to sue survives against his legal heirs. Application is within limitation from the date of knowledge of the plaintiff. The legal heirs of deceased defendant No.2 are the proper and necessary parties. If present application allowed, no harm, loss or prejudice will be caused to the legal heirs of deceased defendant No.2 but if present application rejected, it will definitely caused harm to the plaintiff. Therefore, to avoid multiplicity of proceedings and fair adjudication of all the issues involved in the present suit, it is just and necessary to allow the present application. Hence, in the interest of justice, I proceed to pass the following order.

ORDER

1. Application below Exh.115 is allowed.

2. Permission is granted to the plaintiff to delete the name of defendant No.2 from the title clause of the plaint and insert the words 'deleted since deceased' in front of the defendant No.2.
3. Permission is granted to the plaintiff to add legal heirs of deceased defendant No.2 as defendant No.2A, 2B and 2C respectively in the title clause of the plaint as a legal representative of the defendant No.2.
4. Plaintiff is hereby directed to carry out necessary amendment as per contents of this application within 14 days from the date of this order and supply the copy of amended plaint on record.
5. Issue writ of summon after supply of copy of amended plaint by plaintiff to the proposed defendant Nos.2A to 2C on PF.

Date : 04/12/2024.
Place-Karad.

[S. B. Todkar]
Civil Judge S.D. Karad.