

Vishwanath Digambar Pore	---	Plaintiff.
Vs.		
Ashok Nivrutti Deshmukh & others	---	Defendants.

The present application has been filed by defendants Nos. 1 and 2 for taking on record the legal heirs of the original plaintiff. The plaintiff has filed a say at Exhibit 72 and has opposed the application.

2. The application, say, and record have been perused.
Heard the learned Advocates for both parties.

3. The defendants contended that, during the pendency of the suit, the original plaintiff, Vishwanath Pore, passed away. As his legal heirs were not brought on record, an order of abatement of the suit was passed on 30/01/2012. However, on the same day, the plaintiff filed applications for setting aside the abatement, condonation of delay, and for bringing the legal heirs on record. These applications were allowed by the Court. Thereafter, the suit was decreed in the absence of the defendants. The defendants filed R.C. No. 13/2014, and the matter was remanded back. The original plaintiff had four sons and one daughter. However, the brother of the plaintiff was brought on record as a legal heir in the suit, which is illegal. Further, in the suit, it is not pleaded that the suit properties are joint family properties. Therefore, it is prayed that the plaintiff be directed to bring on record the legal heirs of the original plaintiff as per the Hindu Succession Act.

4. On the other hand, the plaintiff contended that the application cannot be filed at this stage. As per the record, the original plaintiff's name was recorded as the joint family manager. After his demise, the name of Laxman Digambar Pore was entered as the joint family manager. He is conducting the matter as the joint family manager. The legal heirs of Vishwanath have not raised any objection till date. Laxman Digambar Pore has been conducting the matter on behalf of all the parties. Therefore, the application deserves to be rejected.

5. The defendants relied upon the following authority:

***Mahendrasinh Jorubha Zala and another Vs. Deceased Kantaben Shrikrishna Agarwal and another*, AIR 2017 Gujarat 204.**

Wherein it is held that: “*Sole plaintiff dying during the pendency of appeal. None of the legal heirs of the deceased applied for substitution. Such an application can be heard only in pending proceedings and not when the proceedings have already abated.*”

I have taken into consideration the ratio laid down in above authority.

6. Perused the record. The present suit was filed by Vishwanath Digambar Pore for removal of encroachment. It is apparent from the record that, after the demise of the plaintiff, Laxman Digambar Pore was brought on record as a plaintiff. Admittedly, he is the brother of the original plaintiff. In the suit, there is no pleading that the suit was filed by the original plaintiff as a joint family manager. However, at Exhibit No. 39, Laxman Digambar Pore appeared as the joint family manager and power of attorney holder of

the plaintiff. He has taken ground that the suit property was owned by the plaintiff as joint family manager. The children of the plaintiff are residing permanently out of station. After the demise of the plaintiff, the legal heirs of the plaintiff did not cooperate in getting the names of the brothers of the plaintiff entered in the record of the suit property. After inquiry, the names of the plaintiff and his brothers were recorded in respect of the suit properties.

7. As per Order XXII Rule 3 of the Code of Civil Procedure, after the demise of a plaintiff, the legal representatives can be brought on record where the right to sue survives. As per Section 2(11) of the Code of Civil Procedure, "legal representative" means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased. As per the Hindu Succession Act, the son, daughter, mother, and widow are Class-I heirs of a deceased Hindu. In the absence of Class-I heirs, Class-II heirs are entitled to succession. In the present matter, the brother of the original plaintiff, being a Class-II heir, is not entitled to represent the estate of the deceased when Class-I heirs are available. Though the original plaintiff had given a power of attorney to his brother, the death of the plaintiff terminates the power of attorney.

8. Therefore, in view of the above discussion, I am of the considered opinion that the brother of the deceased plaintiff cannot appear as the legal representative of the deceased plaintiff when Class-I legal heirs are available. Hence the present application is liable to be allowed. Hence, the following order is passed.

ORDER

- i) The application (Exh.62) is allowed.
- ii) The suit be proceeded by Class- I legal representatives of the deceased original plaintiff viz., Vishwanath Digambar Pore.
- iii) Costs in main cause.

Place :- Karad.

Date :- 09/01/2026.

(Smt. A.V. Mohite)
3rd Jt. Civil Judge (Jr. Div.), Karad.
Tal. Karad, Dist. Satara.