

ORDER BELOW EXH.47 IN R.C.S NO.180/2014.

1. This is an application made by plaintiff No.1 under Order-6 Rule-17 of the C.P.Code for amendment in the title of the suit.

2. The plaintiff has contended, that plaintiff No.2 has died on 25/09/2016. The plaintiff wants to insert the words “joint family manager” in the title of the suit. In fine, according to plaintiff No.1, he is the manager of joint family of deceased plaintiff No.2 and himself. The application is supported by affidavit (Exh.51) of plaintiff No.1.

3. The defendants have filed their say at Exh.50. According to them, deceased plaintiff No.2 has in all four legal heirs consisting of two sons, a daughter and wife. Therefore, plaintiff No.1 is required to implead all the said legal heirs as party plaintiffs to the suit. If the plaintiff does not intend to implead all the legal heirs, then, he is required to strike out the name of deceased plaintiff No.2. The plaintiff has not adduced evidence in support of his application. On these major grounds, the defendants have prayed for rejection of the application.

4. Heard both sides. Perused record.

5. The suit is for perpetual and mandatory injunction.

Indisputably, plaintiff No.1 is son of deceased plaintiff No.2. It is to be noted, that the application under consideration is made under Order-6 Rule-17 of the C.P.Code for amendment in the title of the suit. The application is not for having on record the legal heirs of deceased plaintiff No.2. It is to be borne into mind, that the Court is not expected to go into the disputed facts between the parties at the time of deciding an application for amendment. This is not the stage to go into the genuineness or falsity of the claim proposed to be incorporated. Therefore, the objection of the defendants to the effect that plaintiff No.1 is not a manager of joint family, would not be an impediment for allowing the application.

6. By way of the proposed amendment, plaintiff No.1 wants to denote himself as a manager of joint family. The proposed amendment is necessary for determining the real question in controversy between the parties. It will not change the fundamental nature of the suit.

7. In view of the above discussion, the application deserves to be allowed. Hence, Order.

ORDER

1. Application Exhibit.47 is allowed in the following terms.

2. The plaintiff to carry necessary amendment in the title of the suit and to supply copies of amended plaint on or before next date in the suit.

Date :14/06/2017.

(M V.Phade)
Jt.Civil Judge. J.D. Patan.