

ORDER BELOW EXH.54

This is an application moved by defendant Nos.1, 2 & 4 to 6 for rejection of plaint under order VII rule 11 of the code of civil procedure.

02. Perused application, documents and say filed by plaintiff vide Exh.73. Heard Ld. advocate Shri. C. K. Jagtap for defendants and Ld. advocate Shri. R. K. Todkar for plaintiff. They addressed their submissions in consonance with their contentions in application and say.

03. By this application, defendants urged to reject plaint on the basis of several grounds that, nullity of suit, suppression of information about legal heirs of defendants, non-joinder of necessary parties, suppression of earlier suit, no right to seek relief to plaintiff etc. Plaintiff contends that, defendant No.2 Ramchandra Bajirao Sawant has been demised on 08.08.2021 and defendant No.3 passed away on 05.11.2020. Both defendant Nos.2 and 3 had died when plaintiff filed present suit. Therefore, defendants urged to reject plaint on that count only.

04. Per contra, plaintiff in his say vide Exh.73 averred that, he intentionally did not file the present suit against deceased defendant Nos.2 and 3. In fact, plaintiff did not have knowledge about factum of death of defendant Nos.2 and 3 at the time of filing of the present suit. Plaintiff also contends that, the name of defendant Nos.2 and 3 has been deleted from the title clause of plaint by virtue of order passed by court. Plaintiff contends that, an

amendment was carried out by plaintiff after payment of cost of Rs.1,000/- to defendants. Plaintiff contended that, he did not suppress material facts from the court. Plaintiff also filed copy of judgment of suit and appeal on record. His suit is not abated therefore, no question arise to to file application for bringing legal representative of defendants. He impleaded all the necessary parties against whom he has grievance in present suit. The present application is filed only in order to protracting the present matter.

05. In this context, on perusal of record it appears that, plaintiff mistakenly filed suit against defendant Nos.2 Ramchandra Sawant and defendant No.3 Anandrao Sawant who were died prior to the institution of suit. Thereafter, plaintiff filed application for impleading Gulab Ramchandra Sawant and Sanjay Anandrao Sawant as a defendants in the suit in view of order 1 rule 10 of the Code of Civil Procedure and the same was allowed by the court on merit after obtaining say of defendants side. Accordingly, plaintiff impleaded them as a parties to the suit in pursuance of order 1 rule 10 of Code of Civil Procedure. Actually, the order passed below Exh.15 is still intact due to said order not challenged by defendants side. The order passed on application below Exh.15 stood unchallenged. Hence, plaint cannot be reject on that ground only.

06. Ld. advocate for defendants submitted that, defendant Nos.2 and 3 are died before the suit. Hence, suit is nullity from its inception and therefore entire plaint is liable to be rejected. Ld. advocate in support of his argument placed reliance upon case law as follows

1. C. Muttu Vs. Bharath Match Works, reported in AIR1964KANT293 decided on 1 August, 1963 where in Hon'ble High Court (Karnataka)

observed in para No.5 that,

(5). In Savitramma V. Nanjundappa, 25 Mys. LJ 113, a Division Bench of the former High Court of Mysore considered the very question raised in this revision petition. Venkataranga Iyengar, J. who delivered the judgment in the case, reviewed the case law on the. Point and held that when a suit is brought against a person as a sole defendant and that person is found to have died before its institution, the suit is a nullity from its inception and the court has no jurisdiction to substitute as defendant the legal representative of the deceased and allow the suit to proceed against him either under Section 153 or under Order 1, Rule 10 (2) of the C.P.C. The facts of that case were exactly similar to the facts in the case before us. The plaintiff in the said suit had filed a suit against one Naranappa on the 5th of March 1945. It was subsequently found that Naranappa had died on 28th November 1944, that is, prior to the institution, of the suit. The application under Order XXII Rule 4 of the C. P. C. to bring on record Savitramma, the daughter of Naranappa, as his legal representative was made by the plaintiff. When Savitramma was served with the notice, she contended that her father had died on 28th November 1944, i.e. prior to the institution of the suit and the suit filed against a dead person was a nullity and was liable to be dismissed. The trial court rejected this contention and allowed the plaintiff to amend the plaint by substituting the name of Savitramma in place of Naranappa as defendant in the suit. Being aggrieved by this order, Savitramma filed the revision petition before the former High Court of Mysore. The revision petition was allowed and the

order passed by the trial court was set aside. As already stated the court held that the suit filed against Naranappa who was dead prior to the presentation of the plaint, was a nullity and the court had no jurisdiction to allow the amendment prayed for.

2. Pratap Chand Mehta Vs Krishna Devi Mehta, reported in AIR1988DELHI267 decided on 25 September, 1987 where in Hon'ble High Court (Delhi) observed in para No.25 that,

(25). I hold that the suit filed against the sole defendant, Ms. Krishna Devi Mehta is a nullity and the plaintiff cannot be allowed subsequently to amend the suit and substitute the legal representatives in place of the defendant. The application of the plaintiff under Order 22 Rule 4 Civil Procedure Code (being IA.671187) fails and is dismissed. The application of Mr. Vishwa Nath Mehta under Order 7 Rule 11 & under Order 22 Civil Procedure Code (being I.A 319111987) is allowed. The result is that the suit filed by the plaintiff against a dead person is a nullity and the same is dismissed. No order as to costs.

07. In aforesaid proposition of case laws, the Hon'ble Delhi High Court and the Hon'ble Karnataka High Court have been held that, suit against a dead person is a nullity and plaintiff cannot be allowed subsequently to amend the suit and substitute the legal representatives in the place of defendants under Order 22 Rule 4 of C.P.C. either 153 or under Order 1 Rule 10 (2) of C. P. C. and the same is liable to be dismissed. Now, it is necessary to look recent legal position relating with that aspect.

08. The Hon'ble Apex Court in case titled Pankajbhai Rameshbhai Zalavadiya vs Jethabhai Kalabhai Zalavadiya (deceased) thr. Lrs and others decided on 03 October, 2017 in Civil Appeal No.15549 of 2017 observed in para No.7, 8, 9 & 15

(7). In the matter on hand, the sale was made in favour of defendant no. 7, and the validity of the sale deed was the subject matter of the suit. The purchaser of the property, i.e. defendant no.7, though dead at the time of filing the suit, was made one of the defendants erroneously. The persons who are now sought to be impleaded under Order 1 Rule 10 of the Code are the legal representatives of the deceased defendant no. 7. Therefore, there cannot be any dispute that the presence of the legal representatives of the deceased is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions in the suit. Their presence is necessary in the suit for the determination of the real matter in dispute. Therefore, they are needed to be brought on record, of course, subject to the law of limitation, as contended under [Section 21](#) of the Limitation Act.

(8). Merely because the earlier application filed by the appellant under Order 22 Rule 4 of the Code was dismissed on 09.09.2009 as not maintainable, it will not prohibit the plaintiff from filing another application, which is maintainable in law. There was no adjudication of the application to bring legal representatives on record on merits by virtue of the order dated 09.09.2009. On the other hand, the earlier application filed under Order 22 Rule 4 of the Code was dismissed by the trial Court as not maintainable, inasmuch as defendant no. 7 had died prior to the filing of the suit and that

Order 22 Rule 4 of the Code comes into the picture only when a party dies during the pendency of the suit. The only course open to the appellant in law was to file an application for impleadment to bring on record the legal representatives of deceased defendant no. 7 under Order 1 Rule 10 of the Code. Hence, the order passed by the trial Court on the application filed under Order 22 Rule 4 of the Code, dated 09.09.2009, will not act as res-judicata.

(9). Order 1 Rule 10 of the Code enables the Court to add any person as a party at any stage of the proceedings, if the person whose presence in Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision. Order 1 Rule 10 of the Code empowers the Court to substitute a party in the suit who is a wrong person with a right person. If the Court is satisfied that the suit has been instituted through a bona fide mistake, and also that it is necessary for the determination of the real matter in controversy to substitute a party in the suit, it may direct it to be done. When the Court finds that in the absence of the persons sought to be impleaded as a party to the suit, the controversy raised in the suit cannot be effectively and completely settled, the Court would do justice by impleading such persons. Order 1 Rule 10(2) of the Code gives wide discretion to the Court to deal with such a situation which may result in prejudicing the interests of the affected party if not impleaded in the suit, and where the impleadment of the said party is necessary and vital for the decision of the suit.

(15). Having regard to the totality of the narration made

supra, there is no bar for filing the application under Order 1 Rule 10, even when the application under Order 22 Rule 4 of the Code was dismissed as not maintainable under the facts of the case. The legal heirs of the deceased person in such a matter can be added in the array of parties under Order 1 Rule 10 of the Code read with Section 151 of the Code subject to the plea of limitation as contemplated under Order 7 Rule 6 of the Code and [Section 21](#) of the Limitation Act, to be decided during the course of trial. In view of the above, the impugned judgment of the High Court is set aside. The appeal is allowed. The Trial Court is directed to implead the legal representatives of deceased defendant no. 7 and bring them on record, subject to the plea of limitation as contemplated under Order 7 Rule 6 of the Code, as well as under [Section 21](#) of the Limitation Act, 1963, to be decided during the trial.

09. In the light of aforesaid proposition of case law, if defendant died prior to the institution of suit then application under Order 22 Rule 4 is not maintainable and the only course open to the plaintiff in law is to file an application for impleadment to bring on record the legal representatives of deceased defendant under Order 1 Rule 10 of the Code of Civil Procedure. It is also clarified in aforesaid proposition of case laws that, Order 1 Rule 10 of Code of Civil Procedures empowers the court to substitute a party in the suit who is a wrong person with a right person and if the court is satisfied that the suit has been instituted through a bonafide mistake and it is necessary for the determination of real matter in controversy to substitute a party in the suit. So considering this proposition of case law in case at hand, it would not be justifiable to reject plaint

threshold as the plaintiff impleaded defendant No.2 Gulab Ramchandra Sawant and defendant No.3 Sanjay Anandrao Sawant as a parties to the suit in view of Order 1 Rule 10 of Code of Civil Procedure. Therefore, the case laws cited by defendants are not helpful to them in the instant case.

10. It is also pertinent to point out here that, the death of defendant No.2 Ramchandra Sawant and defendant No.3 Anandrao Sawant was unknown to the plaintiff and there is bonafide mistake on the part of plaintiff. Also plaintiff was genuinely unaware of the death of defendant Nos.2 and 3 at the time of filing of claim. Moreover, plaintiff had filed application vide Exh.15 under Order 1 Rule 10 of Code of Civil Procedure for impleading party to other defendant Nos.2 and 3 in present suit and the same is allowed on 25.07.2025. Accordingly, plaintiff impleaded defendant No.2 Gulab Ramchandra Sawant and defendant No.3 Sanjay Anandrao Sawant as a parties to the suit. The order passed on application vide Exh.15 is still remained intact due to not challenged by defendants. Therefore, it cannot say that the plaintiff has suppressed information about legal heirs of deceased defendant Nos.2 and 3. On all these reasons plaint cannot be rejected on that ground as prayed by defendants.

11. Defendants raised another ground that, plaintiff impleaded only one of the person namely Sanjay Anandrao Sawant who is legal heirs of deceased Anandrao Bajirao Sawant. Defendants also contended that, plaintiff has not impleaded necessary parties to suit, hence, plaint is liable to be rejected. It is well settled principle

that, plaintiff is “Dominus litis” Therefore plaintiff has right to choose and array parties involved and to seek remedies against them. Plaintiff is claiming perpetual injunction against defendants. Defendant No.2 Ramchandra Sawant and defendant No.3 Anandrao Sawant has been passed away. Therefore, in order to decide matter on merit plaintiff impleaded legal heirs of deceased defendant Nos.2 and 3 to the present suit. In fact, defendants have not specifically stated that, whose presence is required for effective adjudication of suit. Plaintiff impleaded parties to the suit against whom he has grievance in respect of suit property. Also plaintiff’s suit is not abated therefore plaint cannot be rejected on ground as raised by defendants side.

12. Defendants contended that, plaintiff filed present suit by suppressing fact that the Regular Civil Suit No.315/2011 is pending in court at Satara pertaining to the suit property. In this connection, on perusal of copy of Regular Civil Suit No.315/2011 it appears that, this suit is filed for partition of suit property between defendants and others. In fact, plaintiff is not a party to this suit. Plaintiff in present claim has come with the case that, he is a tenant and defendants are trying to oust him without following due process of law. So reliefs claimed by parties in both claims appears to be different. Therefore, the stand took by defendants is not sufficient to reject plaint threshold as contended by defendants.

13. Defendants also averred that, plaintiff has not come with the clean hands, therefore, he has no right to claim any kind of equitable relief in present claim. On perusal of record it appears that,

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temporary injunction application is decided on merit on 21.11.2025. Plaintiff has prima-facie proved factum of possession of suit property is with him. Therefore, temporary injunction application is granted in favour of plaintiff and thereby defendants are restrained from obstructing his possession over suit property without following due process of law. Therefore, defendants cannot say that, plaintiff has no right to claim any kind of equitable relief in present claim. As such, no case is made out for rejection of plaint in view of Order 7 Rule 11 of Code of Civil Procedure. Thus, on all these reasons application is liable to be rejected. Ultimately, I proceed to pass following order.

ORDER

- 1) The application vide Exh.54 stands rejected.
- 2) No order as to cost.

(Order dictated and pronounced in open Court)

Place :- Wai.
Date: 13/07/2026.

(Mrs. S. R. Shinde)
Jt. Civil Judge Junior Division
Wai.