

ORDER BELOW EXH.21 IN R.C.S. NO. 02/2019

(Narayan Fulchand Akode through LRs. V/s. Ashok
Premshankar Paliwal & ors.)

The legal heirs of plaintiff has moved the present application for amendment of pleading in their plaint under Order VI Rule 17 of Code of Civil Procedure 1908.

2. It is contended that, in the present matter, the original plaintiff i.e. Ganesh has died on 11/01/2019, the suit is filed for declaration, possession and mandatory injunction. Further, after the death of plaintiff, the legal heirs are impleaded and said legal heirs got knowledge regarding present case on December, 2019 while they were searching the documents. It is further submitted that, in present matter, the averments regarding knowledge of present case has to be brought on record by making necessary amendment in plaint para No.1. It is further submitted that, the said amendment is a subsequent event and if allowed will not cause prejudice to the defendants. Hence, prayed to allow the application.

3. The defendants have filed say and contended that, the question of limitation has to be considered, the reasons mentions are false only with intent to bring the suit in limitation. Further, the proposed amendment will completely change the nature of suit. There is no need of amendment and hence, they prayed for rejection of application.

4. Considering the above said rival contentions of the parties following points arise for my consideration.

Sr. No.	Points	Findings
1.	Whether proposed amendment is necessary for the purpose of determining the real question in controversy between the parties ?	... Yes
2.	What order ?	... As per final order.

5. Perused the record. Heard the learned advocate for the parties. Record shows that, present suit is for declaration, possession, mandatory and perpetual injunction. Further, record shows that, in present matter, the original plaintiff i.e. Ganesh Fulchand Akode has died on 19/07/2019 and after him the plaintiff No.1 & 2 are been impleaded as his legal heirs. So from the record it is evident that, the legal heirs are already been impleaded. The plaintiffs by way of present application are intending to add the pleadings regarding their knowledge about the present litigation. Considering nature of proposed amendment, it seems that, the plaintiffs are intending to only make a clarification regarding their knowledge of the dispute after the death of original defendant.

6. So I hold that, the proposed amendment will not change the nature of suit. So after considering the stage of matter, nature

of proposed amendment, I hold that, the proposed amendment is necessary to decide the controversy between the parties. Hence, I answer point no.1 in the affirmative. Considering all above aspects I proceed to pass the following order.

ORDER

1. Application is allowed.
2. The plaintiffs are permitted to do the necessary amendment and directed to file the amended copy of plaint within stipulated period.
3. Parties are directed to expedite the matter.

sd/-

Karanja (Gha.)
Date:- 30/01/2024

(V. S. Wagh)
Civil Judge, Jr. Division,
Karanja (Gha.), Dist. Wardha.