



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

ON THE 4th OF JULY, 2025

FIRST APPEAL No. 201 of 2011

RAJESH KUMAR JAIN

Versus

MURLIDHAR JAIN AND OTHERS

.....
Appearance:

Shri Saket Agrawal - Advocate for appellant.

Shri Vijay Kumar Shrivastava - Advocate for legal representatives
respondent No.1.
.....

ORDER

Applicants have filed I.A.No.7671/2022 under Order 22 Rule 4 of CPC for bringing legal representatives of deceased respondent No.1 on record. Another application I.A.No.7672/2022 is filed for condonation of delay in bringing legal representatives on record.

2. Defendants have not filed application for bringing LR's of deceased respondent No.1 on record.

3. Counsel appearing for LR's of respondent No.1 relied upon Order 22 Rule 4(1) of CPC and submitted that it has not been mentioned in Order 22 Rule 4(1) of CPC that it is the plaintiff or defendant who has to file an application for bringing LR's on record. Either of the party can file application.

4. Counsel appearing for appellant submitted that either plaintiff or



defendant can file an application for bringing legal heirs on record and therefore, applications may be allowed and legal representatives of deceased respondent No.1 be brought on record.

5. Counsel appearing for legal representatives of deceased respondent No.1 also made prayer for allowing the applications.

6. Heard counsel for the parties.

7. As per scheme of Order 22 Rule 10A of CPC whenever pleader learns about death of a party, he shall inform the Court about it and Court shall thereupon give notice of death to the other party for this purpose. Order 22 Rule 4(4) of CPC lays down that Court may exempt plaintiff from necessity of substituting legal representatives of any such defendant who has failed to file written statement or who, having filed it, has failed to appear and contest the suit at hearing and judgment is pronounced against said defendant notwithstanding death of such defendant.

8. As per Section 22 Rule 4(5) of CPC if plaintiff is ignorant about death of defendant and could not make an application for substitution of legal representative of defendant under this Rule and files an application after expiry of period under Limitation Act for bringing legal representatives on record, then Court shall consider application under Section 5 of Limitation Act with due regard to such ignorance, if proved.

9. Aforesaid provisions shows that if defendant dies and Advocate of defendant has knowledge about it, then he shall inform the Court. Therefrom Court shall give notice of such death to the other party. Order 22 Rule 4(1) of CPC is to be read alongwith Order 22 Rule 4(4) of CPC, which requires



that application for substituting legal representative is to be filed by plaintiff.

It is for appellant/defendant to show that right to sue survives.

10. Code of Civil Procedure no where lays down that defendant can also file an application for bringing legal representative on record and if such application is filed by defendant same is to be considered by Court. It is the duty of the plaintiff to bring legal representative of deceased defendant on record or of plaintiff on record.

11. In view of aforesaid provision of law it is the duty of appellant to bring legal heirs of deceased on record.

12. No application has been filed by appellant for bringing legal heirs of deceased respondent No.1 on record. Applications filed by legal representatives of respondent No.1 cannot be considered contrary to record.

13. Accordingly, I.A.No.7671/2022 and I.A.No.7672/2022 are dismissed.

14. Appeal is also dismissed as abated.

(VISHAL DHAGAT)
JUDGE

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