

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3643 OF 2023
WITH
INTERIM APPLICATION NO.3645 OF 2023
IN
FIRST APPEAL NO.658 OF 2021

Kunjumon Shivarajan Panicker
(since deceased)

Deepika S. Panicker & Ors. 2

....Applicant

In the matter between

Kunjumon Shivarajan Panicker
(since deceased)

....Petitioner

Versus

Chandravadan Pranolal Doshi & Ors. 2

....Respondents

Appearances :

Mr. Amrut Joshi, i/b. Ketan Dhavle for the Petitioner.

Mr. Sharad Chandrachood, for Respondent.

**CORAM: DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.**

DATE : 26 JUNE 2023.

ORDER - (Per – Sandeep V. Marne, J.):

By these applications, applicants seek their impleadment as legal representatives of deceased appellant, not only in the First Appeal but also in the plaint filed in the Suit, which has already been disposed of. Applicants further seek leave to conversion of Suit filed for grant of probate to the one for issuance of letters of administration with will annexed.

2. Three fundamental issues that arise for our consideration in the present applications are (i) whether applicants claiming to be legal heirs of late Kunjumon Shivrajan Panicker can be brought on record in proceedings filed by him for grant of probate in his capacity as executor thereof; (ii) whether applicants can be permitted to convert the proceedings filed for grant of probate in respect of Will executed by Ranjana Pranal Doshi into proceedings for issuance of letters of administration with will annexed and (iii) Whether after disposal of the suit, applicants can be permitted to amend the plaint in pending First Appeal.

3. The brief factual background, shorn of unnecessary details, in which the aforesaid three issues arise for our consideration are as follows. Ms. Ranjana Pranal Doshi died at Pune on 4 May 2014. Chandravadan Pranal Doshi, Bharati Rajinikant Darak and Shobha

Pratibha Doshi are brother and sisters of Ranjana. They claimed that Ranjana died intestate and therefore filed Civil Miscellaneous Application No.715 of 2014 for grant of Letters of Administration in respect of estate of Ranjana.

4. On the other hand, Kunjumon Shivrajan Panicker claimed that Ranjana had executed a Will on 4 January 2013, under which Kunjumon was appointed as executor of the will. In addition to executor, Kunjumon is also shown to be a legatee, to whom the testatrix had allegedly bequeathed properties mentioned in the Will. Kunjumon therefore filed Civil Miscellaneous Application No.26 of 2015 for grant of probate in respect of will of the testatrix.

5. Both proceedings were opposed by the rival parties. Therefore Civil Miscellaneous Application No.26 of 2016 filed by Kunjumon was registered as Special Civil Suit No.208 of 2019 whereas Civil Miscellaneous Application No.715 of 2014 filed by Chandravadan, Bharati and Shobha was registered as Special Civil Suit No.209 of 2019. For the sake of convenience, Kunjumon is referred, in the present order as the Plaintiff and Chandravadan, Bharati and Shobha are referred to as the Defendants.

6. The Civil Judge Senior Division, Pune passed common judgment and order dated 20 September 2021 dismissing Special Civil Suit No.208 of 2019 filed by Plaintiff for grant of probate. Special

Civil Suit No.209 of 2019 filed by Defendants was allowed directing issuance of Letters of Administration in favour of Chandravadan, Bharati and Shobha with respect to movable and immovable properties mentioned in the plaint which were left behind by late Ranjana Doshi.

7. Plaintiff-Kunjumon has filed present appeal challenging the common judgment and order dated 20 September 2021 passed in both Special Civil Suit Nos. 208 of 2019 and 209 of 2019.

8. During pendency of the present appeal, Plaintiff-Kunjumon died on 13 February 2023. On account of death of Plaintiff-Kunjumon, his legal heirs desire to set themselves impleaded in the present appeal. However Civil Miscellaneous Application No.26 of 2015, which was later converted into Special Civil Suit No.208 of 2019, was filed by Plaintiff-Kunjumon for grant of probate in his capacity of executor of the Will. In view of well settled law that where an executor dies, his legal heirs cannot be substituted as executors possesses merely personal rights. However Plaintiff-Kunjumon was also a beneficiary in the Will. His legal heirs, who are applicants in the present application, wish to stake their claim to the estate of the testatrix allegedly bequeathed to Plaintiff-Kunjumon. However on account of nature of proceeding initiated by Plaintiff-Kunjumon (issuance of probate in his capacity as executor) the applicants cannot be brought on record as legal heirs of the executor,

who merely had a personal right in the proceedings. Due to this difficulty, the applicants wish to convert the proceedings filed by the Plaintiff-Kunjumon from the proceeding for grant of probate to proceeding for issuance of Letters of Administration with will annexed, so that they can be brought on record as legal heirs of Plaintiff-Kunjumon. Therefore the present applications are filed for effecting amendments both in the plaint as well as in the appeal.

9. Interim Application No.3643 of 2023 has been filed seeking amendment in Special Civil Suit No.208 of 2019 as per the following Schedule:

“A. The Cause Title of the Suit be amended as follows

The words ‘Since Deceased’ be added after the name of the Plaintiff Kunjumon Sivarajan Panicker and add following parties as Plaintiffs 1(a) to 1(c)

1a. Deepika S. Panicker

Age: 49 years, Occ: Government Servant

1b. Arjun K.

Age: 30 years, Occ:

1c. Prabha D.

Aged 13 years, Occ: Student

1(c) through next friend Applicant No. 1a

Applicant 1(a) (b) (c) having address at Dileep Bhavan,
Mannathala PO,

Thiruvananthapuram 695 015

B. The Cause Title of the Suit be amended and following Respondent to be added as Respondent No. 4:

4. Lissy Sukumaran Achary

Age: 53 years, Thadathil House,
Mallasery PO, Poomkavu, Pathanamthitta,
Kerala 689 646

C. Following sentence be added at paragraph no. 8

“A. The Applicants state that the original Plaintiff Mr. Kunjomon Sivarajan Panicker expired on 13/2/2023. The original Plaintiff was the executor under the Will dated 4/1/2013. He was also a legatee/ beneficiary under the said Will. Mr. Kunjomon Sivarajan Panicker died intestate. The present Applicant Nos. 1(a) to 1(c) are his legal heirs.

B. The Respondent No. 4 is another beneficiary under the Will dated 04/01/2013 and therefore is a proper party. Therefore, the present Applicants seek Letters of Administration with Will annexed to the Property and Credits of Ms. Ranjan Doshi. All Plaintiffs 1(a) to 1 (c) agree that the Letter of Administration be present to the Plaintiff 1(a).

D. The prayer clause b be replaced with the following

“That Letter of Administration for the properties and credits of the deceased Ranjana Doshi may be presented to the Plaintiff 1(a) having effect throughout India.”

E. Any other consequential amendment if necessary.”

10. Appearing for Applicants, Mr. Joshi the learned counsel would submit that Plaintiff-Kunjumon is not merely an executor in respect of the will but also a legatee/beneficiary thereunder. That therefore Applicants, being his legal heirs, are entitled to apply for issuance of Letters of Administration with Will annexed. He would

submit that though Applicants can file independent application for issuance of Letters of Administration, facts of the case are so peculiar that in view of the findings recorded in the judgment and order under appeal, adjudication of such independent applications for issuance of Letters of Administration would not be in favour of Applicants. This is because the Trial Court has not just dismissed suit filed by Plaintiff-Kunjumon for grant of probate but has also decreed the suit of Defendants by issuing Letters of Administration in their favour. He would further submit that whether it is application for grant of probate or application for issuance of Letters of Administration, the inquiry by Court is same and that therefore no prejudice would be cause to the Defendants by permitting applicants to convert the suit for grant of probate to one for issuance of Letters of Administration with Will annexed. In support of his contention Mr. Joshi would rely upon judgment of the Supreme Court in **Shambhu Prasad Agarwal & Ors. Vs. Bhola Ram Agarwal**, (2000) 9 SCC 714. He would further submit that in **Thrity Sam Shroff Vs. Shriaz Byramji Anklesaria**, (2007) 2 Bom. C.R. 560 Division Bench of this Court had not permitted substitution of proceedings filed for grant of probate after death of executor on the ground that the proceedings had abated. However subsequently in **Haresh Chetan Thadhani Vs. Komal Suresh Chainani & Ors.**, 2015 SCC OnLine Bom.868 another Division Bench of this Court has permitted such substitution following the dictum of

judgment of the Apex Court in *Shambhu Prasad Agarwal* (supra). He would also rely upon judgment of Division Bench of this Court in **Vatsala Shrinivasan Vs. Narsimha Raghunathan since deceased Smt. Shyamala Raghunathan**, 2011 (2) Mh.L.J. 953 in support of his contention that beneficiary under the will is not prohibited from continuing the proceedings filed for grant of probate by converting them for issuance of Letters of Administration with Will annexed. He would also rely upon judgment of Single Bench of this court in **Chandangauri Amarchand Doshi Vs. Bharat Amarchand Doshi & Anr.**, 2016 SCC OnLine Bom.8486 in support of his prayer for conversion of proceedings for grant of probate into the one for Letters of Administration with Will annexed. Mr. Joshi would further submit that Appellate Court can permit parties to amend pleadings filed before the Trial Court and in support of his contention, would rely upon judgment of the Supreme Court in **Pandit Ishwardas Vs. State of Madhya Pradesh & Ors.** (1979) 4 SCC 163.

11. Applications are opposed by Mr. Chandrachud, the learned counsel appearing for Defendants/Respondents. He would submit that entertaining Applicants' application for amendment is an exercise in futility as the Trial Court has not just dismissed Plaintiff's suit for grant of probate but has independently issued letters of administration in favour of the Defendants by decreeing their suit. That the Plaintiff-Kunjumon's appeal is essentially restricted to

dismissal of suit for grant of probate and that no appeal has been filed against decree granting letters of administration in favour of Defendants. He would therefore submit that since letters of administration are already granted in favour of Defendants by holding that Will produced by Plaintiff is not a genuine document, no purpose would be served in granting any further opportunity to the applicants to prove the Will. He would submit that allowing applicant's applications would result in incongruous situation where conflicting decrees may be passed.

12. Mr. Chandrachud would further submit that applicants have no right to get themselves impleaded as legal heirs of executor to the Will, as proceedings for grant of probate were filed by the executor in his personal capacity. He would submit that since the suit of Plaintiff-Kunjumon has already been dismissed, there is no question of this court permitting any amendment in the plaint at this stage. That grant of leave to convert the nature of proceedings would result in complete overhaul of the suit, which is impermissible at such a belated stage. That such conversion would necessitate leading of further evidence, thereby creating further complications in the proceedings. He would submit that the appeal of Plaintiff-Kunjumon has already been abated and that therefore there is no question of bringing his legal heirs on record. He therefore prays for rejection of the applications.

13. Rival contentions of the parties now fall for our consideration.

14. Plaintiff-Kunjumon had filed Miscellaneous Application No.26 of 2015 for grant of probate in respect of alleged Will of Ranjana Doshi executed on 4 May 2014. In his application Plaintiff-Kunjumon disclosed himself as executor under the Will and prayed for grant of probate. Civil Miscellaneous Application No.26 of 2015 was later registered as Special Civil Suit No.208 of 2019. After dismissal of Special Civil Suit No.208 of 2019 vide judgment and order dated 30 September 2021, Plaintiff-Kunjumon has filed the present appeal. During pendency of Appeal Plaintiff-Kunjumon has expired on 13 February 2023. Since Plaintiff-Kunjumon had filed proceedings for grant of probate in his capacity as executor of the Will, his legal heirs cannot be brought on record. As executor he possessed personal rights, which cannot be agitated by his legal heirs. There is no debate about this proposition and Mr. Joshi himself would not object to the same. This would answer the first issue involved in the present applications.

15. As plaintiff had applied for grant of probate in his capacity as executor, in ordinary circumstances, the appeal would abate and the applications filed by the Applicants could have been rejected. However Applicants claim that Plaintiff-Kunjumon was not just an executor to the Will but he was also a legatee / beneficiary under the

Will. Mr. Chandrachud fairly concedes that in the event of Will being found to be a genuine document, Plaintiff-Kunjumon could have been beneficiary under that Will. He however questions genuineness of the Will. Whether the will is genuine document or not is something which would be determined at the time of decision of the appeal. What is undisputed as of now is the fact that Plaintiff-Kunjumon is shown not just an executor but also legatee/beneficiary under the Will. This completely alters the position as for as right of legal heirs to continue the proceedings instituted by Plaintiff-Kunjumon. Once it is held that Plaintiff-Kunjumon is a legatee / beneficiary under the Will, his legal heirs become entitled to pursue proceedings to lay claim to properties allegedly bequeathed to Plaintiff-Kunjumon.

16. However what was filed by Plaintiff-Kunjumon was not an application for issuance of letters of administration. He filed application for issuance of probate in his capacity as executor. In these circumstances, the question that arises is whether Plaintiff-Kunjumon could have applied for conversion of application for grant of probate into the one for issuance of Letters of Administration? To find an answer, we need to look into various judgments relied upon by Mr. Joshi.

17. In *Shambhu Prasad Agarwal* (supra), the will was executed by one Maina Devi nominating her nephew Matadin Agarwal to be the owner of her property. Upon death of Maina Devi, Matadin

Agarwal filed a probate petition, which was converted into suit. During pendency of the proceedings for grant of probate, Matadin Agarwal died and therefore his legal heirs filed an application in the suit for their substitution in place of Matadin Agarwal. They also filed another application for amendment of the petition / suit praying that instead of grant of probate, legal heirs be granted Letters of Administration. In this factual background, the Apex Court held in paragraph No.5 and 6 of the judgment as under-

“5. We find that it is not disputed that Matadin Agarwal was a legatee under the will. It is true that Matadin Agarwal ought to have applied for issue of Letters of administration and not for probate. However, this did not debar his heirs to get the probate petition amended. The trial court rejected both the applications of the appellants on the ground that since the probate petition filed by the legatee related to his personal right, therefore no right accrued to the appellants for their substitution in his place. This view, according to us, is not correct. Matadin Agarwal, as stated above, was a legatee and not an executor under the will. It is true that where an executor dies, his heirs cannot be substituted because the executor possessed personal right, but this is not applicable where the heirs of the legatee apply for issue of Letters of Administration. It is not disputed that today the appellants can file a petition for issue of letter of Administration. Since considerable time has elapsed, we feel that the interest of justice demands that the proceedings should come to an end as early as possible and we should not dismiss this appeal merely on highly technical ground.

6. For the aforesaid reason, we set aside the orders under challenge and send the case back to the trial court. We permit the appellants to be substituted in the proceedings and also permit them to amend the petition. It goes without saying that after the remand, it will be open to the parties to take such plea as may be available to them under the law. Since the matter is pending for a considerable time, we direct the lower court to decide the matter

expeditiously. The appeal is allowed. There shall be no order as to costs."

18. Thus, in ***Shambhu Prasad Agarwal***, the Apex Court not only recognised right of heirs of a legatee to apply for Letters of Administration but permitted them to amend the petition / suit by converting it from proceedings for grant of probate into the one for issuance of Letters of Administration.

19. The judgment in ***Shambhu Prasad Agarwal*** has been considered and followed by Division Bench of this court in ***Vatsala Shrinivasan*** (supra). The issue before this Court was whether the sole beneficiary under a Will can seek substitution in place of an executor who died during pendency of suit for grant of probate of Will. This court in paragraph Nos. 13, 14, 15 and 18 held as under-

"13. The Madras High Court has had occasion to consider as to whether in a pending application for the issue of a probate, upon the death of a sole executor before proving the will it would be competent for a legatee or any other person interested to intervene and continue the proceedings to prove the will and obtain Letters of Administration in his own right. This issue was considered initially in a judgment of a Division Bench in *P. Rama Naidu & Ors. vs. Rangayya Naidu & Ors. AIR 1933 Madras 114* One of the Judges constituting the Division Bench, Venkatasubba Rao, J. held that the proper view is that the object of the executor in commencing the proceeding is to get an adjudication in the interest not only of himself but of others that the will which is propounded is genuine and valid. Reilly, J. in a separate judgment dealt with the contention that when an executor prays for probate, he prays for something which is personal to himself since no one but the executor can get the probate. Holding that the submission looks

more at the form of the proceedings while ignoring the real effect, the learned Judge held as follows:

"An executor who prays for probate prays in form for something which can be granted to no one else. But the essence of the proceedings is that he seeks to establish a will, not for himself, but as the representative of those who take benefits under it. If he fails in his duty, any of those whom he represents may intervene to carry on the proceedings, having in effect by representation through the executor been a party to the proceedings from the outset. And, if in the course of the proceedings the executor drops out through death, it follows that any of those he has represented may similarly carry on the proceedings with the unessential modification that the prayer must then be for Letters of Administration with the Will annexed."

A subsequent judgment of the Madras High Court in *Govind M. Asrani vs. Jairam Asrani & Anr.*, AIR 1963 Madras 456, reiterated the same view. The Division Bench held that both in a case where an executor applies for issue of a probate and also where a legatee or other person applies to the Court for the grant of Letters of Administration with the will annexed, the question that has to be decided is the same, namely, (i) whether the will is true; (ii) whether it was executed in accordance with law; (iii) whether there was capacity in the testator to make the will; and (iv) there being no fraud or other infirmity attending the execution of the document. Whether it be an executor or an administrator, the right or interest possessed by them in the properties of the testator is the same and both have to administer them in accordance with the directions contained in the will. In this context the Division Bench held as follows:

"To put it in other words, the proceedings taken out either for the grant of probate or Letters of Administration with the will annexed are in the interest of the legatees and the question involved in such proceedings will be the same, namely, about the truth and genuineness of the will. In both the cases it will be open to a person interested to intervene. Final adjudication as to the genuineness of the will in both cases will operate as a judgment in rem.

"..... It is true that in form a probate is different from a Letters of Administration with the will annexed; there is also difference in procedure regarding necessity to take security; but it cannot be denied that an adjudication in an application or suit for obtaining probate or Letters of Administration will be binding on all the persons interested in the estate of the deceased testator."

The Division Bench recognized that the impleading of a legatee in the place of the deceased executor would involve an alteration of the petition which was originally filed for the issue of the probate into one for the grant of Letters of Administration but held that this was a technicality not affecting the substance of the matters to be decided in the case.

14. The Supreme Court had occasion to consider a similar issue in *Shambhu Prasad Agarwal & Ors. vs. Bhola Ram Agarwal*, (2000) 9 SCC 714. -----

15. The judgment of the Supreme Court is therefore authority for the principle that the right to seek probate of a Will executed by a deceased testator is personal to the executor appointed under the Will. Upon the death of the executor the heirs of the executor cannot be substituted in his place. **However, this would not debar the legatee and upon the death of the legatee his heirs from seeking substitution.**

18. Both a proceeding for the grant of probate as well as a proceeding for the grant of Letters of Administration with the will annexed is initiated for protecting the interest of the legatees under the will. **The essence of the enquiry in both the proceedings is the same and relates to the genuineness and authenticity of the will. Having regard to these fundamental similarities in both the proceedings there is no conceivable reason as to why the law must be regarded as prohibiting a beneficiary from seeking to continue the proceedings upon the death of the sole executor and as incidental thereto for seeking formal conversion of the proceeding from one for the grant of a probate to one for the issuance of Letters of Administration.** If there were to be a specific prohibition in law enacted by the legislature the position may have well been different.

In the absence of a legal prohibition to the contrary the Court would not readily accept a submission, the effect of which would be to result in delaying the proceedings for the Administration of the estate and a resultant multiplicity of proceedings. This is amplified in the present case where the recording of evidence is complete. Nearly eight years have elapsed since the institution of the suit. Evidence of seven witnesses has been recorded and the suit is ripe for final hearing. There is no dispute about the position that in any event the beneficiary would have been entitled to institute separate proceedings independently for the grant of Letters of Administration. That right can well be espoused by the beneficiary by seeking a continuation of the existing proceedings. It must be noted, that this right which is available is recognized with reference to a beneficiary under the will. A fundamental difference has to be made between a situation where the legal heirs of a sole executor seek impleadment in the proceedings on the death of the executor. The legal heirs of the sole executor cannot be brought on record since the right to seek *probate* of the Will subsists in the executor alone. But that is not to say that a beneficiary under the Will is prohibited from continuing the existing proceedings. The proceedings enure to the benefit of the legatee. The appointment of the administrator is but a step in aid of the proper Administration of the estate of the deceased. Section 273 provides that probate or Letters of Administration shall have effect over all the properties and estate of the deceased through the State in which the same is or are granted and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding property which belongs to him. Parties, documents and facts are similar in both sets of proceedings. In this view of the matter and particularly having regard to the judgment of the Supreme Court to which we have made a reference earlier we are of the considered view that the learned Single Judge was not in error in allowing the Chamber Summons.”

(emphasis supplied)

20. Thus, in ***Vatsala Srinivasan*** this court, after following the judgment of the Apex Court in *Shambhu Prasad Agarwal* held that legal heirs of sole executor cannot be brought on record since right to

seek probate of Will subsists in the executor alone, but beneficiaries under the Will cannot be prohibited from continuing the existing proceedings. This Court also held that the enquiry in both the proceedings is common viz. to determine genuineness of the will.

21. In *Haresh Chetan Thadhani* (supra) Division Bench of this court has reiterated the above legal position. The only difference in *Haresh Chetan Thadhani* is that it considered earlier judgment of Division Bench of this Court in *Thirteen Sam Shroff Vs. Shriaz Byramji Anklesaria* which had stuck a somewhat discordant note by holding that substitution in abated proceedings filed by executor upon his death cannot be permitted upon an application made by legal representatives for issuance of Letters of Administration. In *Haresh Chetan Thadhani*, however, this Court held that the judgment of the Apex Court in *Shambhu Prasad Agarwal* was not brought to the notice of the Division Bench while deciding *Thirteen Sam Shroff*. The court held in paragraph No.11 to 13 as under

“11. Unfortunately, the judgment of the Apex Court in *Sharnbhu Prasad Agarwan* (supra) was not brought to the notice of the Division Bench.-----

12. Apex Court then permitted the Appellant therein to be substituted in the proceedings and also permitted them to amend the Petition.

13. In our view, the facts in the said case before the Apex Court are identical to the facts of the case in this appeal. We are, therefore, of the view that the learned Single Judge has rightly permitted the Respondents/original Plaintiff to amend the Petition for Probate

and seek Letters of Administration. It is not in dispute that the Respondents/original Plaintiff were entitled to file a Petition for issuance of Letters of Administration. No useful purpose will be served therefore in now asking them to file a separate Petition for Letters of Administration. As it is, Petition for Probate was filed in 1999 and it is pending in this Court for last about 14 years.”

22. In *Chandanagauri Amarchand Doshi* a Single Judge of this court has dealt with somewhat similar factual situation as involved in the present case. In that case, the testator had died after making a will and his wife was not only the sole executor but also the sole beneficiary. The wife filed proceedings for grant of probate, which were opposed by her sons. During pendency of proceedings, the wife died and applications were filed by children for conversion of the petition for grant of probate to that of issuance of Letters of Administration with will annexed. This Court held that the wife fulfilled both capacities as executor and beneficiary and that therefore her heirs cannot be denied their rights only because she had filed proceedings for grant of probate. This court held in paragraph No.14 as under-

“14. Chandanagauri fulfilled both capacities. She was an executor. She was also the sole legatee. Chandanagauri’s children are her heirs as a legatee and that heirship cannot be denied or eclipsed merely because she has sought probate, acting as an executrix, to her late husband’s Will.”

23. After considering the law expounded in the judgments quoted above it is clear that heirs of a beneficiary / legatee under a Will are entitled to have their names substituted upon death of legatee / beneficiary. Furthermore, proceedings filed by an executor who is also a beneficiary, for grant of probate can be converted into proceedings for issuance of Letters of Administration and in such proceedings, heirs of said beneficiary / legatee can be permitted to be substituted.

24. However in all the judgments cited above, the question of substitution of legal heirs and/or conversion of proceedings from grant of probate to issuance of Letters of Administration took place during pendency of the original proceedings. In the present case, the original proceedings instituted by Plaintiff-Kunjumon for grant of probate have been terminated on account of dismissal of his suit. What pendes now is the appeal instituted by Plaintiff-Kunjumon. The issue that therefore arises is whether heirs of Plaintiff-Kunjumon can be permitted to convert proceedings filed before the Trial Court into proceedings for issuance of Letters of Administration. We see no difficulty in doing so, primarily because what can be done by Plaintiff-Kunjumon himself can also be done by his heirs. Furthermore what can be done during pendency of the original proceedings before the Trial Court can also be done during pendency of appeal before this Court. Appeal is afterall continuation of proceedings filed before the

Trial Court. Plaintiff-Kunjumon has filed the present appeal to establish his rights under the Will, which he failed in establishing before the Trial Court. a Plaintiff-Kunjumon could have applied for conversion of proceedings during his lifetime. As held in the above quoted judgments, after his death, his legal heirs could also have applied for conversion of proceedings. We see no reason why the legal heirs cannot do so in pending appeal.

25. It is also required to be borne in mind that the Applicants have right to file their own independent proceedings seeking Letters of Administration. However their entry into present appeal is necessitated on account of issuance of letters of administration by the Trial Court in favour of the defendants. Therefore with a view to ensure that there are no conflicting decrees, it is appropriate that both the parties establish their rights in same proceedings, which is the present Appeal.

26. The matter needs to be viewed from another angle as well. If applicant's applications are to be rejected, the same would result in rendering them remediless in respect of their alleged rights flowing out of alleged Will executed in favour of Plaintiff-Kunjumon. Plaintiff-Kunjumon made an attempt before the Trial Court to establish that a valid Will was executed by Ranjana Doshi in his favour. He failed in his attempt and the Defendants succeeded in establishing before the Trial Court that the Will is not a valid

document and Ranjana Doshi died intestate. Plaintiff-Kunjumon was aggrieved by the findings recorded by the Trial Court and has filed the present appeal before this court. During pendency of the appeal he has unfortunately expired. If heirs of Plaintiff-Kunjumon are now not permitted to be brought on record, the same would result in extinguishment of their rights. If on the other hand, the applications are allowed by bringing legal heirs of deceased Kunjumon on record, they would get a chance to appeal before this court that findings recorded by Trial Court are erroneous. However the only way by which legal heirs of Plaintiff-Kunjumon can be brought on record is by converting the original proceedings for grant of probate into proceedings for issuance of Letters of Administration with Will annexed. As held by this Court in *Vatsala Shrinivasan* (supra), the nature of enquiry in both the sets of proceedings is same. The legal heirs of deceased Plaintiff will have to prove before the Appellate Court that the will has been validly executed. Therefore Applicants can be permitted to convert the proceedings instituted by Plaintiff-Kunjumon for grant of probate into the one for issuance of letters of administration with will annexed.

27. This propels us to the last issue of permissibility to amend pleadings in a disposed of suit at appellate stage. Applicants are seeking amendment of the Plaint for its conversion into application for issuance of letters of administration with will annexed. Upon being

enquired whether it is really necessary to amend the plaint at this stage, Mr. Joshi would express an apprehension that since records and proceedings/paper book would be re-questioned by this court for deciding the appeal, it would be necessary to carry out the amendment in the plaint as well so as to ensure that there is no incongruity between the plaint and the memo of appeal.

28. It is well settled legal position that pleadings in suit can be permitted to be amended even at the appellate stage. In this connection the judgment relied upon by Mr. Joshi in *Pandit Ishwardas* (supra) is apposite. In paragraph No.5 of the judgment it is held as under :

“5. There is no impediment or bar against an appellate Court permitting amendment of pleadings so as to enable a party to raise a new plea. All that is necessary is that the appellate Court should observe the well known principles subject to which amendments of pleadings are usually granted. Naturally one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and, if made at the appellate stage, the reason why it was not sought in the trial Court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be more readily granted than otherwise. But, there is no prohibition against an appellate Court permitting an amendment at the appellate stage merely because the necessary material is not already before the Court.”

Therefore, even though Suit instituted by Plaintiff-Kunjumon has been disposed of, his legal heirs can be permitted to amend the plaint

in the suit for converting the same into the one for issuance of letters of administration. Therefore both the applications for conversion of Suit into proceedings for issuance of Letters of Administration with Will annexed and for substitution of names of legal heirs deserve to be allowed.

29. Mr. Chandrachud's objection that allowing applicants' applications is an exercise in futility does not appeal to us. It appears that the Plaintiff-Kunjumon has challenged the common judgment and order dated 20 September 2021 passed in Special Civil Suit No.208 of 2019 as well as Special Civil Suit No.209 of 2019. This court has passed ad-interim injunction in favour of the appellant, on account of which the Letters of Administration issued in favour of Defendants have not been executed. Therefore Mr. Chandrachud's contention that the Letters of Administration issued in favour of Defendants are not under challenge or that the same have been acted upon does not appear to be factually correct. So far as the objection of Mr. Chandrachud that conversion of proceedings at this belated stage would warrant leading of additional evidence, Mr. Joshi would fairly submit that since the inquiry into both types of proceedings is common/same, there would ordinarily be no necessity of leading any additional evidence. Under the provisions of Order 41, Rule 27 of the Civil Procedure Code, during the course of hearing of the Appeal, it is for this Court to decide whether any additional evidence would be

necessary and at this juncture it is not necessary to make any observations in that regard.

30. Mr. Chandrachud also sought to make submissions about merits of the appeal. However at this juncture we are not concerned about the merits of the matter. What needs to be decided today is whether the proceedings filed for grant of probate can be permitted to be converted into proceedings for issuance of Letters of Administration with will annexed and whether applicants can be permitted to be substituted in place of deceased Plaintiff-Kunjumon. Mr. Chandrchud however fairly concedes that the nature of inquiry in both the proceedings would be same and that therefore the ultimate question which this Court would decide in the appeal would be who is entitled to be issued Letters of Administration in respect of the estate of late Ranjana.

31. Resultantly we are of the view that both the Interim Applications filed by Applicants deserves to be allowed. We therefore proceed to pass the following order:

- i) Interim application No.3645 of 2023 is allowed by permitting the Applicants to be brought on record as legal representatives of the deceased Appellant. They are also permitted to amend the appeal memo in

terms of Schedule annexed to the Application.
Necessary amendment be carried out within 2 weeks.

- ii) Interim Application No.3643 of 2023 is allowed by permitting Applicants, who are brought on record as legal representatives of deceased appellant, to amend the plaint in Special Civil Suit No.208 of 2019 in terms of Schedule annexed to the Application. Necessary amendment be carried out before the Trial Court within a period of 4 weeks from today.
- iii) Both the Interim Applications are accordingly disposed of. There shall be no order as to costs.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.

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