



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**5 CIVIL APPLICATION NO. 10796 OF 2025
IN FA/3595/2019**

CHANDRAKANT TRAYMBAK KUTE
VERSUS
AJIT HASTIMAL GANDHI AND ORS

Mr. A.S. Gandhi, Advocate for the applicant.
Mr. A.P. Bhandari, Advocate for respondent No.1.
Mr. Abhijit Choudhari, Advocate for respondent No.4 (iii) & (iv).

**CORAM : KISHORE C. SANT &
SUSHIL M. GHODESWAR, JJ.**
DATE : 26.03.2026

PC :-

01. Learned Advocate for the applicant seeks leave to delete respondent No.3.

02. Leave granted at the risk of the appellant.

03. Heard learned Advocate for the applicants. In this application applicant No.1 is original defendant No.3 and applicant Nos. 2 to 4 were transferees of original defendant No.3. The prayers in this application are that applicant Nos. 2 to 4 be made appellant in the First Appeal No. 3595 of 2019. So far as this prayer is concerned, there is no opposition by the parties.

04. So far as prayer in respect of substitution of respondent Nos.5 and 6 in place of respondent No.4 is concerned, this prayer is opposed by present respondent No.4 (iii) and (iv), who happened to be heirs of respondent No.4 and who was defendant No.4 in the suit. It is a case that respondent No.4 also happened to be partner of partnership firm. However, he had accepted sale-deed to the extent of his share in the property of the partnership firm in favour of respondent Nos. 5 and 6. Though defendant No.4 was very much party to the suit, he never chose even to appear before the Court. It is now stated that since original defendant No.4 had transferred rights in favour of respondent Nos. 5 and 6, they are necessary parties. Since the interest is already assigned in favour of respondent Nos. 5 and 6, respondent No.4 is not necessary party.

05. Learned Advocate Mr. Choudhari vehemently opposes the application stating that the legal heirs being legal representatives of deceased respondent No.4, they have every right to contest the appeal. It is, therefore, a case that the partnership firm was dissolved and therefore they have still right being partners in the partnership firm. It is therefore prayed that as the partnership deed is by succession, they have

acquired right.

06. What this Court finds is that when defendant No.4 was very much there in the suit, he even did not appear. Even in appeal he never appeared. It is only after his death, now his legal heirs are trying to contest the proceeding.

07. Learned Advocate Mr. Bhandari relies upon order 22 Rule 4(4) of the CPC, which reads as under :-

"4. Procedure in case of death of one of several defendants or of sole defendant.

x x x x x

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place."

. He thus submits that when defendant No.4 had chosen not to appear and contest the suit, now it is not necessary to bring his legal heirs on record.

08. This Court, thus, considered the arguments. This Court finds some substance in the arguments of learned Advocate Mr. Choudhari that

they may have independent right. It is open for them to file whatever proceeding, if advised, to establish their case before appropriate forum.

09. So far as present appeal is concerned, this Court finds that they are not necessary parties. This application is, therefore, allowed in terms of prayer clauses (B) and (C). The Civil Application stands disposed off.

10. The substitution shall not be detrimental to the interest of respondent No.4. All issues are kept open.

11. Place First Appeal for hearing on 16.04.2026.

[SUSHIL M. GHODESWAR, J.]

[KISHORE C. SANT, J.]