

Online/E-filing Order
MHAU05-000616-2024



ORDER BELOW EXH. 29 IN CIVIL M. A. NO. 43/2024
[Zaheedabee Maddu Vs. Chhannobi and others]
[Order passed on 25/06/2025]

Shaikh Harun Shaikh Mehabub has filed this application to allow him to come on record as applicant in capacity of legal heir of the applicant.

2. In short, it is his contention that original applicant Zaheedabee has filed this petition. But, during pendency she met with an accident and died on 30.12.2024. Her death certificate is filed on record. It is contended that she has no parents alive. Moreover, she has no issue. She has only one brother namely Shaikh Harun i.e. the proposed applicant. Being successor and legal heirs of Zaheedabee, he wants to participate and proceed with the application. Hence he prayed to allow the application and allow him to come on record as applicant.

3. Say of the non-applicants is called. The non-applicants failed to file say but on the day of argument of application, advocate of the non-applicants opposed the application on the law points. Heard Ld. Advocate for applicant he argue to the tune of his application. The advocate of the non-applicants argued the application and contended that

though her share was determine by trial court but execution proceeding filed by her is withdrawn by her as per Exh. 33 in that proceeding and the execution is disposed of in the year-2015. Therefore she has no right to claim partition as prayed in the petition and prayed to reject the application. It is also contended that what is the actual fact is fact within the knowledge of original applicant i.e. Zaheedabee and now she is no more. In the circumstances no fruitful purpose will be served by allowing proposed applicant to come on record as applicant and prayed to reject the application.

4. I have gone through the proceeding filed online. It appears that in the trial, the court has determined share of Zaheedabee. Thereafter one execution petition is filed and she has withdrawn the said proceeding but by this application, she contents that she has not signed on withdrawal pursis and alleging fraud upon her and upon the court. Therefore her petition is registered and notice is issued to non-applicants. Now it is matter of record that she died during pendency of petition and thereafter Mr. Harun who is brother of the applicant wants to come on record as applicant. What are the merits of the matter will be seen at the time of final hearing. But being only one brother and legal heir of Zaheedabee, he is entitled to proceed with the application as right to sue survives in favour of legal heirs of Zaheedabee. As per Order XXII Rule 5 of the Code of Civil Procedure, it will be legal and proper to determine legal heirship of the applicant. In the application the applicant claims that he is brother of Zaheedabee. It is not denied by the non-applicants. Moreover, nobody has objected legal heirship of Mr. Shaikh Harun Shaikh Mehabub. In the circumstances, without going to the merit of

main petition, it will be legal and proper to allow the application and allow the proposed applicant to come on record as applicant. Hence the application is liable to be allowed. The proposed applicant needs to be allowed to come on record as applicant for the purpose of determination of real question in controversy between the parties. He shall have to be directed to amend the petition in the title clause and filed amended petition on record within 14 days. At this stage it is not proper to impose costs upon any party. Hence it will be legal and proper to direct the costs of the application to follow event. Hence the order.

ORDER

1. The application is allowed.
2. The proposed applicant is allowed to come on record as the applicant.
3. He do amend the proceeding and file amended copy on record within 14 days.
4. The non-applicants are at liberty to file their reply to the amendment if any.
5. The costs of the application to follow the event.

Date : 25.06.2025

(P. D. Zambre)
Jt. Civil Judge, Senior Division
Vaijapur