

MHAU100005112020



ORDER BELOW EXH. 51 IN RD. No. 02/2020
(Ajinath and ors V/s. Sitaram and other)

01. This application has been filed by DH Nos. 1 and 3 for striking out the name of DH No. 2-A to 2-C.

02. DH Nos. 1 and 3 submitted that they have filed this execution petition as per decree passed in RCS No. 40/2014. Meantime DH No. 2 died and his LRs are taken on record but they are not ready to proceed with this petition. Hence, they prayed for deletion of their name from this petition.

03. JD filed their say and objected this application by submitting that this petition has been filed by D. H. jointly and LRs of D. H. are also taken on record. Therefore, it will not proper to proceed with matter by refusing right of LRs. They further submitted that notice of this application be sent to DH No. 2-A to 2-C

04. Perused the record. Heard Ld Advocate for both sides.

05. This execution petition has been filed by DH Nos. 1 to 3 against J.D. for breach of injunction order passed in RCS No. 40/2014. It seems from record that during pendency of this proceeding, DH No. 2 has been died. His LRs are also taken on record. But they failed to appear and proceed this matter.

06. The decree in execution is the decree of perpetual injunction and based upon personal cause of action. Any one out of plaintiffs / DHs. can file execution if defendants / JDs. caused any obstruction to the possession of one or more plaintiffs / DHs. In the present proceeding, as per DH Nos. 1 and 3, the obstruction from JDs. are going on their possession and LRs. of DH No. 2 are not interested in the present proceeding. Therefore, DH No. 1 and 3 are every right to proceed with this petition by deleting the names of LRs. of DH No. 2. Per contra, it will not cause prejudice to LRs. If defendants / JDs obstructed to their possession, they have every right to file execution advocate present. Order passed on Exh.05. Application is allowed. In such circumstances it would not be proper to keep this execution pending only for the reason of non appearance of the LRs. of the DH No. 2. Hence, the application is liable to be allowed. Thus following order is passed.

ORDER

1. The application is allowed.
2. Permission to strike out the names of LRs. of the DH No. 2 is hereby granted.
3. Remaining DH shall carry out necessary amendment in Exh. 01.

Date:-16/04/2024

(V. H. Khedkar)
CJJD., Khultabad.