

Namdeo Vs. Abid Hussain and others

MHGA110000252013



IN THE COURT OF CIVIL JUDGE JUNIOR
DIVISION, KURKHEDA
(Presided Over by N.P. Deshpande)

R.D. No. 01/2013

Decree Holder :- Namdeo Jayram Mankar,
Age: 58 Yrs, Occupation: Retired Teacher,
R/o Kurkheda, Ta. Kurkheda, Dist. Gadchiroli.

-VERSUS-

Judgement Debtor:-

- 1. Aabid Husen Nijam Husen Sayyad (died),**
1 (a) Nyaj Aabid Husen Sayyad,
Age: 38 Yrs, Occupation: Nil,
R/o Kurkheda, Ta. Kurkheda,
Dist. Gadchiroli.
- 1(b) Fulnaz Yejaj Khan,**
Age: 27 Yrs, Occupation: Nil,
R/o Kamlanagar, Ta. Desiaganj,
Dist. Gadchiroli.
- 1(c) Yetesham Aabid Husen Sayyad,**
Age: 38 Yrs, Occupation: Nil,
R/o Kurkheda, Ta. Kurkheda,
Dist. Gadchiroli.
- 2. Nafizjaha Aabid Husen Sayyad,**
Age: 49 Yrs, Occupation: Household,
R/o Kurkheda, Ta. Kurkheda,
Dist. Gadchiroli.
- 3. Grampanchayat Kurkheda,**
Through Sarpanch Grampanchayat Kurkheda,
Ta. Kurkheda, Dist. Gadchiroli.
- 4. Shivnath Jayram Mankar,**
R/o Khedegaon, Ta. Kurkheda,
Dist. Gadchiroli.
- 5. Ramesh Jayram Mankar,**
R/o Kurkheda, Ta. Kurkheda,
Dist. Gadchiroli.

Ld. Advocate M. T. Saudagar– for the Judgment Debtor
Ld. Advocate Buddhé– for the Decree Holder

Order below Exh-48 & 53

Both these application are filed by the the legal heirs No.1(a) to 1(c) of the deceased judgment debtor Abid Hussain Nizam Hussain Sayyad. As per the averments in the application, deceased judgment debtor No.1 Abid Hussain has been died and all his legal heirs are not joined in the present execution petition.Hence the legal heirs No.1(a) to 1(c) have prayed to dismiss the execution petition.

2. Execution petitioner filed say on the overleaf of the application. As per say, if all the legal heirs of deceased J.D.No.1 are not joined in such situation judgment debtors should intimate names, age and addresses of the remaining legal heirs of the deceased.

3. Heard learned advocate Shri. M.T. Saudagar for judgment debtors and learned advocate Shri. P. N. Budhe for decree holder.

4. It is pertinent to note here that the present execution petition is pending from 2013 and more than 10 years old. As per record, vide judgment and order of this Court in RCS No.12/2009 dated 23.02.2012, the suit is decreed and J.D.No.1 & 2 being tenants of the suit/decreetal property are directed to give its vacant possession to the decree holder within three months alongwith arrears of rent Rs.7500/-. Meanwhile Judgment debtors challenged the decree vide RCA No.08/2012 before the Hon'ble District Court, Gadchiroli. Thereupon, Hon'ble District Court

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Gadchiroli vide Judgement and order in RCA No.08/2012, dated 17.01.2018 pleased to dismiss the appeal. Thereafter, judgment debtors had challenged it in Second Appeal. Hon'ble Bombay High Court Bench at Nagpur has been pleased to dismiss the Second Appeal No. 239 of 2018 vide order dated 28.06.2024. Thereafter, on 05.09.2024 judgment debtors intimated to this Court that J.D.No.1 Abid Hussain Nizam Hussain Sayyad has been died on 14.12.2020.

5. After getting the intimation of demise of J.D.No.1, decree holder filed application to join legal heir 1(a) Nyaj Abid Hussain Sayyad, 1(b) Fulnaz Yejaj Khan and 1(c) Yateshyam Abid Hussain Sayyad. Accordingly, all abovemention legal heirs of deceased J.D. No.1 are joined. Meanwhile legal heir No. 1(b) filed application Exh-52 that her name is Shiba Tarannum Yejaj Khan and not Fulnaj Yejaj Khan. Accordingly, as per common order below Exh-52 & 1 dated 27.02.2025 this Court directed decree holder to amend the name of legal heir no. 1(b).

6. At present it is the application or objection of the legal heirs No. 1(a) to 1(c) of the Judgment debtor No.1 that decree holder has not joined all the legal heirs of the deceased. As per record, decree holder has joined legal heir No.1(a) to 1(c) in the execution petition. Thus, it appears that decree holder joined the sons and daughter of the deceased within his knowledge. It is the specific knowledge of the present applicants 1(a) to 1(c) and Judgment debtor

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No.2 who are remaining heirs of the deceased. If it is the objection of the present applicants that all the legal heirs of the deceased are not joined. Then it is their responsibility to give the name of the remaining legal heirs of deceased Judgment debtor No.1. There upon decree holder is under obligation to join them by amending execution petition. Otherwise the petition shall be dismissed for want of steps. At this stage, I do not find any substance in the application. Hence, I pass following order.

ORDER

1. Application is partly allowed.
2. Legal heir No. 1(a) to 1(c) and JD No. 2 are hereby directed to give names and addresses of remaining legal heirs of deceased Judgement Debtor No.1 Abid Hussain Nizam Hussain Sayyad till next.
3. There upon decree holder is directed join the remaining legal heirs by amending execution petition.
4. Application is disposed off accordingly.

Date: 20.03.2025

(N.P. Deshpande)
Civil Judge Jr. Division,
Kurkheda.