



ORDER BELOW EXH. 33 IN R.C.S.
No. 95/2018.

Bebitai Dasharath Telvekar Vs. Smt. Gangubai Shiva
Telvekar.

CNR -MHKO130001352018

1. This is the application of the defendants no. 2 & 3 filed with request to recaste the issues at Sr. No. 3 & 4.
2. The defendants have specifically pleaded that this Court has framed issues below Exh. No. 30. However, while framing issues at Sr. No. 3 & 4, the burden is shifted on the defendants. Per contra, the defendants have only denied the fact relating to the legality of the heir Dashrath. Thus, burden can not be shifted on the shoulders of the defendant. Hence, as the burden is wrongly shifted, the defendants have prayed to allow the application.
3. The application is objected by the plaintiff by filing their say on the overleaf of this application. It is specifically pleaded that, as per the contentions of the defendants in the written statement, the burden to prove the same contentions will lie on the defendants. The plaintiffs are legal-heirs of Dashrath. As the defendants have denied the said fact specifically the burden will lie on them. The defendants are avoiding their burden. Hence, the plaintiff has prayed to reject the application.
4. Heard both the sides.
5. Gone through record, the defendants in the written statement have specifically taken contentions in paragraph no. 17/A that, the plaintiffs are not legal-heirs of the deceased Shiva

Rama Telvekar and therefore the plaintiff & defendant are not co-parcener of each other. As the defendants have taken this specific ground, as per the law of evidence, more particularly, as per Sec. 103 of the Indian Evidence Act, the burden in the case through the framed issues is rightly shifted on the defendants to prove the same. Therefore, there is no substance in the application as put forth by the defendants. Resultantly, following order is passed:-

ORDER

1. The application is rejected.
2. There is no order as to costs.

Kagal.
Date: 09/11/2023.

Sd/-.
(A. B. Jawale)
Jt. Civil Judge Jr. Division
Kagal.