

MHLA110003332016



**Order below application vide Exh.137 for rejection of plaint
vide Order VII Rule 11 of the Code of Civil Procedure in
RCS No.314/2014 Shashikala and Ors. Vs. Gunderao and
Ors.**

The application discloses that the plaintiffs filed the present suit for partition and separate possession against father, mother, brothers and sisters. During pendency of the suit, plaintiff No.2 withdrawn the suit to the extent of her rights. Plaintiff No.1 Shashikala expired and her legal representatives i.e two sons and two daughters are added as a parties to the suit. Plaintiff Shashikala had not come in witness box. Her husband Angad deposed on 12.04.2024 on her behalf. Angad is not successor of deceased Shashikala. Mitakshara's school divides the property into obstructed heritages and non obstructed heritages. The property inherited by the Hindu from his father, father's father and father's father's father but not from maternal grandfather is a non obstructed heritage. Due to death of Shashikala, her sons and daughters have no birth right in the property of maternal grandfather or maternal grandmother. Defendant No.2 Bharatbai is maternal grandmother of sons and daughters of plaintiff Shashikala. Therefore, the plaintiffs have no rights to claim the birth rights in the suit property. Grand-daughter and grandson cannot claim share in the property of maternal grandfather or grandmother. Granddaughters and grandsons have

no rights to claim the share in the property of their maternal grandfather. Because, the suit property becomes ancestral of maternal grandfather. In such circumstances, the suit property becomes obstructed heritage which means rights of sons and daughters of Shashikala will be accrued after the death of the owner. Mother of Shashikala is alive. Birth rights only applied to the paternal ancestral property, not to property inherited through maternal side. In the present suit, defendant No.2 Bharatbai is mother of deceased Shashikala. Therefore, the sons and daughters of Shashikala have no birth rights in the property of maternal side. Merely, due to death of Shashikala, her successor rights cannot be accrued in the property of maternal grandfather and maternal grandmother. Defendant No.2 Bharatbai is maternal grandmother of sons and daughters of Shashikala. During the life time of Shashikala, the question of rights to share in the property of her father is not decided. Due to death of Shashikala, her sons and daughters have no right to sue. Therefore, the plaintiffs i.e sons and daughters of Shashikala cannot seek partition in the suit property as of their birth rights. In such circumstances, the suit is barred by the provision of law. Therefore, the defendants lastly prayed to reject the plaint.

2. The plaintiff contended that, Shashikala filed the present suit for partition during her life time. After her death, her legal heirs stepped into sue of Shashikala. Therefore, legal heirs of deceased Shashikala have every right to proceed further the suit and seek partition. The precedent mentioned by the defendant is not applicable as facts and circumstances are different. Rights in the suit property are opened by the hands of

Shashikala by the way of present suit and her legal heirs proceeding further to finalize her rights.

3. The parties Ld. Advocates submitted contents of the application and say thereon respectively.

4. Perused the record. It reveals that, heirs of deceased Shashikala are proceeding with the suit after demise of Shashikala. The suit property is alleged to have been the ancestral and belongs to the joint family. The parties pleaded relations independently in their plaint and written statements. Prior to filling of present application, the suit was fixed for final argument. The plaintiffs also raised issues in their say as aforesaid. The defendants also raised various aspects as aforesaid. The trial is concluded. The issues raised by the parties in the application as well as say may be raised at final hearing. Issues raised by the defendants require the considerations of relevant material and evidence adduced. In such circumstances and considering the rival pleadings, material on record and the reliefs sought for, it is difficult, at this stage to hold that the suit is barred by the provision of law and the plaint is liable to be rejected. In view of matter, I passed following order

ORDER

1. Application vide Exh.137 is rejected.
2. No order as to costs.

Date :03/12/2025
Place: Nilanga

(R. V. Pande)
Civil Judge, Senior Division, Nilanga,
District Latur.