

MHLA110007822018



Order below Exh.135 in RCS No.178/2015

Ugrasen Vs. Bhanudas

By this application defendant Nos.1 to 3 have requested for issuing direction to plaintiff to produce the death certificate of deceased Raghuram Ghotale, on the grounds stated in the application. The contents of application in short are:- That the plaintiff in para No.4 of his plaint has pleaded that deceased Raghuram Ghotale died 40 years ago and the said fact has been denied by these defendants. Since year 2015 plaintiff has not produced the death extract of deceased Raghuram Ghotale and the said aspect regarding the date of death of deceased Raghuram Ghotale has substantial importance and it is necessary to issue direction to plaintiff to produce death certificate/extract of deceased Raghuram Ghotale. Hence, the application.

2. Plaintiff has filed his say and raised objection on the grounds that the similar application filed by defendants at **Exh.86** came to be rejected and therefore, the present application is not tenable. It is further contended that the matter is posted for final argument and to prolong the matter these defendants have moved this application. Thus, requested to reject it.

3. Perused application and say. Heard learned advocate Shri U.S.Jadhav for defendant Nos.1 to 3 and learned advocate Shri Hadole for plaintiff. Both of them have submitted in the line of their application and say respectively. Record shows that plaintiff has filed this suit for partition and separate possession in respect of suit properties described in para No.3 of the plaint. In para No.4 the plaintiff has contended that his grand-father i.e. deceased Raghuram Ghotale died before 40 years leaving behind his son Bhaurao and two daughters namely Shevantabai and Vatsalabai. It is pertinent to note that defendant Nos.1 to 3 in their WS at **Exh.40** has specifically denied the said fact regarding the death of deceased Raghuram Ghotale about 40 years ago and as per their contentions deceased Raghuram Ghotale died before 1940 and therefore, the provisions of Hindu Succession Act, 1956 are not applicable and the plaintiff has no share.

4. Record further shows that issues are framed by my learned predecessor at **Exh.53** on 08/08/2016 and issue No.3 is in respect of the fact regarding the death of deceased Raghuram Ghotale had occurred before 1940 or not. The plaintiff, who has specifically pleaded that deceased Raghuram Ghotale died 40 years ago has not filed any documentary evidence to that effect. The said fact as to the date of death of deceased Raghuram Ghotale goes to the root of matter and no prejudice will be caused if the plaintiff is directed to produce the death certificate of deceased Raghuram Ghotale on record. Hence, I pass following order:-

ORDER

1. The application is allowed.
2. Plaintiff is hereby directed to produce the death extract/certificate of deceased Raghuram Ghotale on record, at the earliest.
3. No order as to costs.

Order dictated and pronounced in open court.

Date :12/04/2023

(Ashish B. Marlecha)
Civil Judge (Sr.Dn.),
Nilanga, Dist. Latur.