

MHNS130000802013

**R.C.S./14/2013**Smt Shankuntala Nivruti Jadhav  
etc 3

Vs.

Smt Suman Nivruti Jadhav etc 2

**ORDER BELOW EXH.74 IN**  
**REGULAR CIVIL SUIT NO.14/2013**

**01]** Third parties have moved this application for impleading them as legal representatives of deceased defendant No.1. They have contended that defendant No.1 was legally wedded wife of Nivrutti Jadhav. She became owner of the suit property after death of her husband. On 10/12/2010, she executed registered will deed of the suit properties in favour of third parties. She died on 24/05/2024. Therefore, the third parties are legal representatives of deceased defendant No.1. Therefore, it is prayed they may be added as defendants No.1A to 1C in the suit.

**02]** The plaintiffs filed say (Exh.78) and resisted the application on the ground that the third parties have no concern with defendant No.1 or the suit properties. It is necessary for the third parties to obtain heirship certificate from the Competent Court. Defendant No.1 died on 24/05/2024. No legally representative was brought on the record within the limitation. The suit was automatically abetted against defendant No.1. The earlier application filed by the third parties was not pressed by them. Hence, this application may be rejected with compensatory costs.

03] Learned advocate for both sides argued as per the contains in the application.

04] The suit is for partition and separate possession of the suit properties. It is not disputed that defendant No.1 died on 24/05/2024. The present third parties had moved application (Exh.70) under Order 1, Rule 10 of the C.P.C. on 18/03/2025 for adding them as parties on the basis of will deed. However, the third parties again file this application under Order 22, Rule 5 of the C.P.C. and thereafter, not pressed application (Exh.70). It appears that earlier application (Exh.70) came to be not pressed because of reason that it was filed under wrong provision.

05] In the earlier application and in this application also the third parties have contended that after getting knowledge of execution of will deed, they searched it. After getting knowledge of this suit, they appeared and filed application (Exh.70).

06] Limitation for bringing legal representatives of deceased party on record is 90 days from the date of death of the party. As per Order 22, Rule 4 of the C.P.C., Court may order to set aside abetment or dismissal, if it is proved that there was sufficient cause for making application in prescribed period under the Limitation Act, 1963.

07] In this case, the third parties does not appear to be

legal heirs of deceased defendant No.1. Copy of will deed shows that third parties are children of sister of deceased defendant No.1. The reasons mentioned in the application are probable that the third parties were not aware about existence of will deed and pendency of this suit. The reasons are supported by affidavit of third parties. The third parties have furnished sufficient cause for not making this application within prescribed limitation.

**08]** It is pertinent to note that the third parties have not made specific prayer for condonation of delay and set aside abetment. However, the application contains sufficient reason for not making application within prescribed period. Objection of not filing separate application for condonation of delay is technical in nature. Therefore, I find that the third parties have made out for sufficient cause for not filing this application within prescribed period. Therefore, it is necessary to consider this application after the prescribed period.

**09]** Order 22, Rule 5 of the C.P.C. empowers the Court whether any person is or not legal representative of a deceased plaintiff or deceased defendant. Copy of the will shows that deceased defendant No.1 has purportedly executed registered will deed in favour of third parties. Therefore, the third parties are legal representatives of deceased defendant No.1. Therefore, it is necessary to implement them as legal representative of deceased defendant No.1. The application deserves to be

allowed. Hence, I pass following order-

**ORDER**

- (i) The application (Exh.74) is allowed.
- (ii) The third parties be impleaded as defendant No.1A to 1C as legal representative of deceased defendant No.1.
- (iii) The plaint shall be amended accordingly.

Sd/-

**(A. J. Patil)**

Civil Judge, (Jr. Dn.)  
Pimpalgaon (B).

Dated : 21/04/2026

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