

ORDER BELOW EXHIBIT 39 IN RCS No.166/2019
Jayabai Misal & Ors. Vs. Ramesh Misal & Ors.
CNRNO.MHOS0400 0972 2019

The present Application is preferred by the Defendants No.2 and 3 submitting that, they are appearing in the matter, hence they may be permitted to file the *Vakilpatra*, address memo and time may be granted to file say. It is submitted that, the defendants had not received summons in the matter and the matter has proceeded against them. It is also argued that the present suit is filed in connivance with defendant No.1 to defeat the rights of the defendants No. 2 and 3 who have filed R.D No.8/2019 in execution of judgment and decree in RCS No.189/2004.

2] The present Application is opposed by the plaintiffs by submitting that there is delay in filing the application and the defendants were aware of the present matter as at Exh.25 in R.D. No. 8/2019, the plaintiffs herein had submitted copy of plaint in the present suit.

3] Heard. Perused record.

4] It appears that, eventually, the applicants herein have submitted applications at Exh.42 and 46 alongwith copy of written statement, which came to be allowed vide Sec.151 of C.P.C. in the peculiar facts of this case. It appears that defendants No. 2 and 3 had filed RCS No.189/2004 which came to be decree in their favour and execution proceeding R.D No.8/2019 was preferred. It also appears that defendants No. 2 and 3 are the children of defendant No.1 from his first wife (since deceased). Plaintiff No.1 is claiming to be the second wife and plaintiffs No. 2 and 3 are stated to be children of defendant No.1. It also appears that despite the ongoing dispute, as per

Bailiff report at Exh.9, defendant No. 1 has accepted summons on behalf of defendants No. 2 and 3. Accordingly ex-parte order was passed on 24.07.2019. It also appears that defendant No. 1 has not put up his defence in the present matter. It also appears that the present suit is filed to set aside judgment in RCS No.189/2004 which was decreed in the favour of defendants No. 2 and 3 against defendant No.1. It also appears that it would be appropriate to grant an opportunity to defendant Nos. 2 and 3. After hearing the earlier applications at Exh.42 and 46, written statement on behalf of defendants No. 2 and 3 is taken on record. Considering the Defendants' right to legal counsel and put up their defence, there does not appear to be any impediment in allowing the present application. Time was also granted to file say. In these circumstances,

ORDER

- 1] Application is allowed.
- 2] Application is accordingly disposed of.
- 3] Costs on Applicants.
- 4] Order be uploaded on the CIS by the stenographer.

Date : 18/06/ 2024.
Place : Tuljapur

(**P.S.G.Chalkar**)
Jt. Civil Judge Junior Division.,
Tuljapur- Osmanabad