

ORDER BELOW EXH.-22 IN REG. CIVIL APPEAL NO.-31/2024

1] This is an application, filed under Order XXII Rule 3 of the Code of Civil Procedure, for bringing on record LR. of appellant no.2.

2] The case of the appellants in brief is that, they have preferred present appeal against judgment and decree in Spl. Civil Suit no.84/2018, passed by Ld. Civil Judge, Sr. Divn. Baramati, as on 12.09.2023. During the pendency of the appeal, on 03.08.2025, the appellant no.2 Indubai is died leaving behind no any legal representative, except legatee who is son of appellant no.1 by name Shri. Sanjay Narayan Sawant. As, since 40 years the appellant no.1 and the legatee were looking after and maintaining the appellant no.2 Indubai and as such, she by executing Will Deed bequeathed all her movable and immovable properties to said Sanjay. In the circumstances, the appellant no.1 may be permitted to delete name of appellant no.2 and bring on record his son Sanjay as her legal representative.

3] The respondent no.1 by filing say at Exh.25 denied all allegations and contested the application on the grounds that, as appellant no.2 died issue-less, in view of section 15 of Hindu Succession Act, her share devolves upon heirs of her husband i.e. his brother appellant no.1, sisters i.e. respondent nos.1 and 2 and sons and daughter of his brother i.e. respondent nos.3A to 3C. It is wrong to say that, appellant no.2 has executed any Will. The decision in respect of legal representatives and their shares has to be taken at the time of final decision of the appeal. Lastly, he prayed for keeping the application for hearing along with final argument of the appeal. However, after hearing arguments on the application, the respondent no.1 by filing purshis at

Exh.-28 dated 16.02.2026 informed to the Court for allowing the application filed by appellant no.1 as prayed for.

4] Heard. Perused the record. Following points arise for determination and my findings thereon, for the reasons recorded thereunder are as follows.

Sr No.	Points	Findings
1.	Whether the appellant no.1 prima facie proves that, his son Shri. Sanjay Narayan Sawant is the legal representative of appellant no.2 ?	<u>Partly affirmative.</u>
2.	What order ?	<u>As per final order.</u>

REASONS

5] **AS TO POINT NOS-1 AND 2 :-**

In support of the application, the appellant no.1 Narayan has produced on record his affidavit at Exh.23.

6] In support of the say, the respondents have not produced on record any affidavit.

7] After hearing arguments of both the Ld. Advocates, I have gone through the record. It reveals that, the plaintiffs / respondent nos.1 and 2 had filed Spl. Civil Suit no.-84/2018 for partition and separate possession of their respective share in suit properties against defendants / appellants and respondent nos.3A to 3C, the Ld. Jt. Civil Judge, Sr. Divn. Baramati decreed the said suit as on 12.09.2022 and held the defendant

no.2 / appellant no.2 has 1/6th share in suit properties. There is controversy between both the parties as according to the appellant no.1, the said share will go to his son Sanjay as per Will Deed and according to plaintiff / respondent no.1, the said share will go by survivorship. The said controversy cannot be decided without proof and legatee of Will Deed dated 02.08.2025 which is produced on record by the appellant no.1 at serial no.2 with list dated 09.12.2025. Order XXII Rule 5 of the Code of Civil Procedure provides that :-

5. Determination of question as to legal representative.—Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court: 1 [Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.]

8] If aforesaid factual and legal position is taken into consideration, it can prima facie be said that, there is need of determination as to whether son of appellant no.1 Sanjay is the legal representative of deceased defendant / appellant no.2 Indubai, as contemplated under Order XXII Rule 5 of the Code of Civil Procedure. However, the appellant on affidavit at Exh.23 stated the said fact and produced on record copies of affidavit dated 10.11.1993 and of Will dated 02.08.2025 at serial nos.1 and 2 with list dated 09.12.2025 and the respondent no.1 by filing purshis at Exh.28 dated 16.02.2026 has

given no objection for bringing on record legal representative of defendant / appellant no.2 and in the circumstances, there appears no any hurdle in allowing appellant no.1 to delete the name of appellant no.2 from the appeal memo as she is died and add his son Shri. Sanjay Narayan Sawant R/o. Patas Road, Patangshala Nagar, Baramati, Dist. Pune as respondent no.4. The question of acquisition of legal representation by respondent no.4 Sanjay is kept open for determination, at appropriate stage, as observed earlier. The submissions of advocate of appellant by relying on case of **Tarachandra Vs. Bhavarlal and another Civil Appeal no.15077/2025 (arising out of SLP (C) No.22439/2024 dated 19.12.2025 Hon'ble Supreme Court)** that there is no need to take probate for Will, with due respect, will not help to appellant no.2, at this very prima facie stage, due to different facts and want of such prima facie proof. Accordingly, point no.1 answered as partly affirmative and I pass the following order.

ORDER

1] Application at Exh.22 is partly allowed as follows :-

a] The appellant no.1 is permitted to delete the name of appellant no.2 from the appeal memo and to bring on record Shri. Sanjay Narayan Sawant, R/o. Patas Road, Patangshala Nagar, Baramati, Dist. Pune as respondent no.4.

b] The question as to whether added respondent no.4 Sanjay is legal representative of deceased appellant no.2 is kept open for determination according to law at the appropriate stage.

2] The appellant no.1 to comply aforesaid order on or before next date, bring on record copy of amended appeal memo and take steps to

serve the notice of the appeal memo on added respondent no.4 Sanjay, as per rules.

3] Costs in main cause.

Date:-16.02.2026.

(R. G. Malashetti)
District Judge-3, Baramati

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same word for word as per original order.

Court Name :- R. G. Malashetti,
Addl. Sessions Judge, Baramati

Name of Steno. :- S. Y. Shaikh, (Steno -Grade-1)

Date of order. :- 16.02.2026

Order signed by P.O. on :- 17.02.2026

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