



Order Below Exh.57
(In R.C.A. No.479/2019)

1. Application at Exh.57 is filed to take on record written statement of Respondent No.11(i) to 11(iii). In it request is also made for dismissal of original suit for non-joinder of necessary parties and framing a preliminary issue.
2. Say of other side was called upon. Respondent No.1(b) has filed say at Exh.72 and has strongly objected the application on ground that there is collusion between Applicant & Respondent No.11(i) to 11(iii) to delay the hearing of appeal. No additional pleadings can be filed at appellate stage. Original Respondent No.11 namely Anubai Malu Kalokhe was Defendant No.8 and she has filed Written Statement jointly with Defendant No.7, 9 & 10. She was party before Trial Court. Legal heirs cannot take any defence contrary to what has been pleaded.
3. Heard Ld. Advocates for the parties.
4. Perused record. Points for determination along with my findings thereon are as follows:

Sr. No.	Points	Findings
1	Whether written statement can be accepted at this Appellate stage ?	No
2	What Order?	Revision is Rejected



-: REASONS :-

AS TO POINT NO.1:-

5. Present Respondent No.11(i) to 11(iii) are legal heirs of deceased Respondent No.11 namely Anumbai Malu Kalokhe. As per these Respondents deceased was necessary party and without her presence any relief or effective order cannot be passed. To support their arguments, Respondents have placed on record Mutation Entry No.709 dt.11/08/1981, copy of 7/12 extract and list of subsequent purchasers of plot.
6. As per Respondent No.11(i) to 11(iii) preliminary issue is required to be framed before going into merits of the appeal. As per them, there was no legal necessity to sell out suit property. They have never sold agricultural lands to Plaintiff and opportunity was not given to defend their undisputed rights by Trial Court. In prayer clause, prayer is made to dismiss original suit along with cost.
7. Present Respondents are taken on record as legal heirs of deceased Respondent No.11. This Written Statement along with incidental prayers is filed by Shrikrishna Ramchandra Dharap as a power of attorney holder of Respondent No.11(i) to 11(iii). Along with written statement, copy of Power of Attorney is not placed on record. Appellants have not filed there say. Appeal is filed by Shrikrishna R. Dharap and this Written Statement is filed by this appellant. By filing this written statement Appellant No.1 has acted in dual capacity as Appellant and



Power of Attorney holder of Respondent No.11(i) to 11(iii) . This act of Appellant prima-facie shows that there is collusion between Appellant No.1 and Respondent No.11(i) to 11(iii).

8. This Written Statement is filed without going through record & proceedings or with malafide intention. Record shows that in original suit deceased Anubai Malu Kalokhe is Defendant No.8 and she has filed Written Statement jointly with Defendant No.7, 9 & 10. It cannot be said that Respondent No.11(i) to 11(iii) were not aware of this fact. Plaintiff no.1 who has acted as power of attorney of respondent no.11(i) to 11(iii) is also aware of the fact that Written Statement of Defendant No.8 is on record.
9. When parties and their Ld. Advocate are aware of the fact that Written Statement is already on record then there was no need to file on record exh.57. Respondent no.11(i) to 11(iii) have filed this written statement with ulterior motive to prolong the appeal and have wasted valuable time of the court for which in view of section 35-b of Civil Procedure Code, 1908, it is necessary to impose costs on them. Considering these facts, Exh.57 cannot be taken on record. As a result, I pass following order.

:: ORDER ::

1. Exhibit 57 with incidental prayers is rejected.
2. Respondent No.11(i) to 11(iii) shall deposit costs of Rs.10,000/- in the account of DLSA, Raigad-



Alibag in view of section 35-B of Civil Procedure Code, 1908.

3. Payment of cost shall be condition precedent as per section 35-B of Civil Procedure Code, 1908.

Panvel,
Date: - 25/04/2024

(S. C. Shinde)
District Judge-3, Panvel
Dist.-Raigad