

## **Order Below Ex. 32 in RD No. 130 / 2012**

(Nagnath Vs. Rasul)

This is an application for bringing legal heirs of deceased Decree Holder on record. It is the contention of the applicant that he is the grand-son of deceased Decree Holder Nagnath Ramling Shinde. The said deceased has executed registered Will in respect of the suit property in his favour. He also contended that other legal heirs of deceased Decree Holder has no objection to add him as Decree Holder in the present matter. Hence, prayed to allow the application.

2. The JD has filed say at Exh.37 and opposed the application on the ground that the DH was died on 27-07-2022 and time to bring legal heirs on record i.e. of 90 days has already been passed. Therefore, the execution is abated. Moreover, the DH did not file the application for setting aside the abatement. Unless all legal heirs of DH are brought on record, the present application is not tenable. On all these grounds, prayed to reject the application.

3. Heard the learned counsel for both sides.

4. Perused the record, death certificate of original Decree Holder and Will executed by original Decree Holder in favour of present applicant. The said Will is not yet proved. Moreover, when there are other legal heirs of original Decree Holder alive, the present application cannot be allowed to continue the proceeding and allow

the present applicant only to be added in the array of Decree Holder. The learned counsel for the Decree Holder has argued that other legal heirs have filed pursis in the matter that they have no objection to continue the proceeding by the present applicant, as deceased DH has executed Will in favour of the applicant. I have already hold that the said Will is not yet proved, according to law and whether in the said Will the suit property is given to the applicant or not is yet to be decided on merits.

5. As regards, the objection of JD that the execution is abated, however, as per Rule 12 of Order 23 of the C.P.C., Rules 3, 4 and 8 of Order 23 are not applicable to execution proceedings of a decree. Hence, I find no substance in the objection raised by the learned counsel for JD in this regard.

6. In view of above discussion, the applicant is directed to bring all legal heirs of deceased Decree Holder on record.

7. The applicant is directed to add all legal heirs of deceased Decree Holder on or **before 20/12/2023** and shall file the amended copy of Exh.1 on record.

Date: 06/12/2023

( **G. V. Gandhe** )  
2<sup>nd</sup> Jt. Civil Judge, Jr. Division  
Madha.

## CERTIFICATE

I affirmed that, the contents of this PDF file order are same word to word as per original order.

Name of Stenographer : A. A. Jadhav (Grade-3)

Court Name : Shri. G. V. Gandhe, 2<sup>nd</sup> Jt. C.J.J.D.  
and J.M.F.C., Madha.

Order signed by P.O. : 06/12/2023

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