

**R.C.S. No.223/1975**  
**(CNR No. MHST05-000002-1975)**

**Order Below Exh.253**

This is an application moved by plaintiff No.1D for deleting the names of plaintiff Nos.2 to 17 and defendant Nos.3 to 19.

**Brief contents of application are as under: –**

2. It is contended that,predecessor in title of plaintiffs and defendant Nos.3 to 19 had mortgaged suit property with predecessor in title of defendant No.1 on 20/06/1947. Predecessor in title of defendant No.1 had mortgaged suit property with defendant No.2 on 3/02/1966 and 10/01/1967. For the redemption of said mortgage, plaintiff Nos.1 to 17 have filed present suit by joining defendant Nos.3 to 19. The defendant No.1 has admitted that the suit property is mortgaged property. However, after the death of defendant No.1 legal heirs of defendant No.1 and 2 have submitted false written statement to prolong the matter.

3. Further, it is contended that by filing such written statement defendant No.2 has taken defence that he is tenant in the suit property. However, he has not produced documentary evidence in support of his contention then also the Court has framed issue regarding tenancy and referred the matter for decision on the issue of tenancy to the revenue court. Against said reference, the plaintiffs have submitted review application which has been rejected by this Court. So, the plaintiffs are going to claim relief against said decision before the proper forum.

4. Further, it is contended that, as per section 60 of the Transfer of Property Act, any legal heir can proceed with the matter for redumption of mortgage. In case in hand, other legal heirs have

executed assignment deed in favour of present plaintiff. So, the plaintiff has right to proceed with the suit on behalf of all plaintiffs. The plaintiffs have already repaid entire amount of mortgage to the defendants by receipt No.27 and receipt No.106 as they have deposited it in the Court. So, the suit property is already redeemed. The defendants cannot hold the property with them forcibly and illegally. The plaintiffs have not brought on record legal heirs of defendant Nos.2 to 17. So also, legal heirs of defendant Nos.3 to 19 are also not brought on record due to technicalities and nonavailability of death certificate etc. Due to which, defendant No.2 is prolonging the matter. Hence, plaintiffs have prayed for deleting the names of defendant Nos.2 to 17 and 3 to 19.

5. Defendant No.2 has submitted his say to application under consideration at Exh.262A. In which, he has denied all the contents of the application. It is contended that, application is devoid of merits and not at all tenable. It is the contention of the defendants that, plaintiffs themselves have contended that defendant No.1 to 7 are legal heirs who are having right to claim the redemption and themselves have joined as party to the suit. Thereafter, they have joined plaintiff Nos.2 to 17 and defendant Nos.3 to 19 as party to the suit. Out of them, some have died during the pendency of the suit. Their legal heirs are not brought on record by the plaintiffs. So, suit has already stood abated against them. Thereafter, the plaintiffs have produced on record alleged 'Baichen Patra' and on the basis of said 'baichen patra' they are claiming relief claimed in this application. After the abatement of the suit against deceased plaintiffs and defendants to give a go by to the legal provisions of law application under consideration has been drafted. It is also tactics to prolong the matter. Hence, on all these grounds, defendant No.2 prayed for rejection of the application.

6. Heard both learned advocates and gone through the record of proceedings. Admittedly, present suit is filed for redemption of mortgage and possession. It is also an admitted fact that the suit property was mortgaged by predecessor in title of the plaintiffs with predecessor in title of defendant No.1. By this application the plaintiff No.1D contends that some legal heirs of the plaintiffs have executed assignment deed (Baichenpatra) in favour of plaintiff No.1D. Said assignment deed has been produced on record along with list of documents Exh.256. Perusal of which shows that Suresh Vishnu Waghmare, Sharad Vasant Waghmare, Jagdish Kashinath Waghmare, Ashok Shripati Waghmare, Bhopal Vitthal Waghmare and Dinkar Ramchandra Waghmare have given authority to Mohan Nivrutti Waghmare to conduct present proceeding.

7. However, it is pertinent to note here that, in this document itself, the executant have contended that the mortgage-deed was executed by their predecessor in title Keru Mura Waghmare, Zingabai Sakharam Waghmare, Shiva Dadu Waghmare, Kesu Yesu Waghmare, Maruti Vithu Waghmare, Dadu yesu Waghmare and Nana Gunda Waghmare. The executent of this assignment deed or Baichenpatra are not the only legal heirs of above referred 07 persons i.e. mortgagor. Further, original plaintiff No.1, 13, 15, 16 are already deleted from the record and plaintiffs themselves have brought the legal heirs on record. Moreover, plaintiff Nos.3, 4, 5 and 6 are also dead. Their names are also delted from the title clause of the plaint. Similarly, plaintiff Nos.8 to 12, 14 and 17 are dead and their names are also deleted. Some of the legal heirs of plaintiffs have moved an application on 03/12/2012 for taking them on record as third party applicants. Similarly, defendant Nos.3 to 7, 10, 11, 12 and 15 are also dead. Legal heirs of some of them are already brought on record and legal heirs of these are

not brought on record. So, suit already stood abated against them.

8. It is the contention of the defendant No.1D that, as per the provisions of Section 60 of the Transfer of Property Act, any legal heir can file suit for redemption of mortgage. I have gone through this provisions. However, this provisions only provides for redemption of mortgage. Nowhere, it is contended that one of the legal heir of the mortgagor may filed suit for redemption of mortgage.

9. As I have mentioned earlier, as per the Baichenpatra itself, there were 07 mortgagors. Assignment deed or Baichenptra is only executed by some of the legal heirs of deceased mortgagors. Already, names of deceased defendants are deleted from the record and names of deceased plaintiffs are also deleted from the record. Legal heirs of some of the plaintiffs and defendants are not brought on record. So, suit stood abated against them. In such situation, deleting the names of plaintiff Nos.2 to 17 and defendant Nos.3 to 19 from the record will not be proper. Moreover, it is not contention of the plaintiff No.1D that, plaintiff No.1A to 1C have also authorized him to move such application on their behalf. They are not even party to the assignment deed also. So, only on application of plaintiff No.1D without consent of plaintiff Nos.1A to 1C, it will not be proper to delete the names of defendant as prayed by the plaintiff. Hence, in view of the above discussion, application deserves to be rejected. In the result, I pass the following order.

### **ORDER**

1. Application (Exh.253) is hereby rejected.
2. Costs in cause.

Karad.

[Sou. V. P. Gaikwad]

Date:- 09/01/2019

Jt. Civil Judge, Senior Division, Karad.