

Baban Sarjerao Shinde V/s. Namdev Shamrao Shinde & Ors.

(CNR No.MHST1400-1340-2008)

This application has been filed by plaintiff under O.22 R.4A of the Code of Civil Procedure, 1908.

2) Wherein plaintiff averred and submitted that, defendant no.1 Namdev Shamrao Shinde died while suit was fixed for hearing. His legal representative wife Babai Namdev Shinde was added as defendant. But she also died. Her death extract is at Exh.91. They have no class one and class two heirs as per Hindu Succession Act, 1956. Hence, plaintiff has preferred this application to appoint Nazir an officer of the Civil Court Phaltan to represent the suit properties of deceased defendant no.1.

3) Although defendant no.1 is died, his advocate has filed say to this application and prays that the application be rejected. Other defendant no.2 to 20 called but found absent. Their advocates are also absent. Hence, this application shall proceed without their say. Heard Ld. Adv. N.M.Yadav for plaintiff. He submitted that, this application should be allowed and presumed that it is their argument.

4) In view of order 22 rule 4A, the court may appoint an officer of the court to represent the estate of the deceased. The court may require to issue notice of this application but considering the plaint and the written statement of the defendants, no notice was issued as there was no heir to the deceased. The suit was filed in 2008. On perusal of record and proceeding it appears that, issues were settled on 12/07/2016 at Exh.70. Plaintiff has filed his examination-in-chief affidavit at

Exh.37 and 74 on dated 20/12/2011 and 25/10/2016 respectively. Thereafter an application below Exh.96 is filed on 14/08/2019.

5) Before considering the issue involved in this application, it will be necessary to look at the plaintiff's plaint and written statement of defendant no.1 to 3, 11 and 12. The plaintiff has come up with a case that, suit properties have not been partitioned and they are in their common possession. The plaintiff takes crops from the suit property. Defendant no.1 took advantage of the fact that his name was recorded to the record and rights of the suit property, he transferred them in the name of defendant no.2 and 3 in 2008 vide M.E. No. 424. Defendant no.1 to 3 threatened to remove the plaintiff from the suit property. The plaintiff was therefore compelled to file this suit against the defendants.

6) The written statement of defendant no.1, 2, 3, 11 and 12 Exh.33, 25 and 69 is material for the adjudication of this application. In support of the allegations made by the plaintiff in plaint defendant no.1 to 3 categorically submitted that, they have executed a registered partition deed in the year 2008 in respect of suit property situated at village Kopardi, Tal.Phaltan, Dist.Satara as well as properties situated at village Tambve. It is further contended that, defendant no.1 out of his share from Gat No.106 has sold H.1.1!! R. by registered sale deed in favour of defendant no.11 and 12. The same fact is admitted by the defendant no.11 and 12 at Exh.69. In such a case, the plaintiff states in the application that, after the death of defendant no.1

Nazir, an officer of the Civil Court, Phaluan be appointed to the entire suit properties.

7) Although the statements of the defendants are not clear, neither the plaintiff nor the defendants have brought any such documents on record. The plaintiff also does not mention it anywhere in this application. 7/12 extract of the suit property Bhumapan No.29/13/3 Exh.7, No.8A/3/2 Exh.8, No.106/42/1, 42/2 Exh.9 indicate that, defendant no.1 Namdev Shamrao Shinde's entire name is bracketed by revenue authorities. So can the prayer of plaintiff be allowed at this stage?

8) Since the name of the defendant no.1 is bracketed from the occupant column, it will not be appropriate to appoint Nazir an officer of the court to entire suit property as averred by the plaintiff. The plaintiff's claim, the statements of this application and the written statement of the defendants are a matter of evidence and proof. If that evidence were not forthcoming, the order on this application will create complications. Therefore, considering the plaint of the plaintiff, the written statement of the defendants and the above findings, it is ordered as follows.

O R D E R

An application below **Exh.96** is hereby rejected with costs.

Place: Phaltan.

Date : **09th February 2021.** (**Yuvraj Chandrakant Patil**)

4th Jt. Civil Judge Junior Division