

MHST160006292024 	<p style="text-align: center;"><u>Order Below Exh.148 In Regular Darkhast No.14/2024.</u></p> <p style="text-align: center;">(Venkat Raghu Jedhe Deceased through Lrs. Vs. Raghunath Raghu Jedhe Deceased through Lrs.)</p>
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This is an application filed by JD No.1A2 to argue on exh.5.

2. JD No.1A2 has submitted that DH has filed this execution proceeding for partition against them. They appeared in said proceeding. DH and JD No.11 both have argued on exh.5. But it is necessary to hear JD No.1A2 on said application ie. exh.5.

3. Predecessor of present JD was plaintiff in original suit. Hence, order below exh.5 can not be passed without his argument. Therefore he prayed to argue on exh.5.

4. Per contra DH has filed his say overleaf to exh.148 and resisted the contents of application. He contented that the said application is regarding inclusion of third party purchaser to execution proceeding. Third party purchaser claimed their right. Hence, JD No.1A2 not concerned with this point. This application is given to prolong the matter. Hence application be rejected.

5. The points of determination along with my findings thereon with reasons are as under:

Sr.No.	Points of Determination	Finding
1.	Whether JD No.1A2 is entitled for relief as prayed.	No

2.	What order?	Application is rejected as per final order.
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REASONS

Point no.1:-

6. Learned advocate of DH has submitted that his say is his argument.

7. Learned advocate of JD has filed written argument at exh.150. He argued that said execution proceeding is instituted for the execution of decree passed in RCS No.131/1987. Said suit was decided in the year 1993. After 31 years of passing preliminary decree, decree holder has filed this execution proceeding. In the original suit predecessor of plaintiff Vyankat Jedhe was defendant and predecessor of Raghunath Jedhe was plaintiff.

8. He further argued that RCS No.131/1987, is instituted for partition. Only 2 heirs of Vyankat Raghu Jedhe have instituted this execution proceeding. Vyankat Jedhe had 4 daughters. Decree holder did not add said 4 daughters. Raghunath is died. Present JD is heirs of Mahadeo, who is son of Raghunath.

9. Heirs of Vyankat Jedhe have filed application at exh.5 to add proposed JD in this execution proceeding. They have filed application at exh.37, to add proposed JD. The matter is fixed for hearing of exhs.5 and 37. Present JD did not get opportunity to file say below exh.5. The court has passed issue notice order to proposed JD. The Decree holder in present suit has argued completely on exh.5. Similarly, some proposed JD has also

argued on exh.5. But present JD did not get any opportunity to file their say and argument on exh.5.

10. He further argued that any party in the suit of partition is plaintiff and defendant. Considering this view the court can not pass any order on exh.5 behind back of present JD. He further argued that proposed JD were not parties to the suit of partition. Hence, there is no necessity to add them as proposed JD.

11. It is the argument of learned advocate of present JD why Decree holder add him as JD in the present execution proceeding. Decree holder did not give any reason for same. There was partition between Vyankat Jedhe and Raghunath Jedhe after preliminary decree passed in original suit in the year 1993. After that Raghunath, Vyankat and their heirs sold the property mentioned in the suit to various persons vide sale deed. JD had taken defence that a partition took place since long.

12. He further argued that present decree holder had instituted a civil suit having RCS No.86/2024 against JD's. Said suit is pending till today. It will come on record that execution proceeding for partition can not be instituted as RCS No.86/2024 is instituted. Decree holder did not give sufficient answer for addition of present JD. Hence he prayed to file say and argue on exh.5.

13. It is seen that matter is fixed for order on exh.5. This is an application for inclusion of proposed JD. But present JD has filed this application. Present JD is heirs of plaintiff in original suit. Decree holder who is heirs of defendant in original suit, has

instituted present execution proceeding. Any party of the suit of partition is plaintiff and defendant. Therefore, it is the requirement to heard decree holder and proposed JD. The detailed argument of both decree holder and proposed JD no.1 is completed. Many dates are given for said argument. Therefore, There is no necessity to argue proposed JD on exh.5. Considering above discussion I answer point no.1 is in negative and in answer to point no.2, I pass following order.

ORDER

1. Application is rejected.
2. Cost in cause.

Date: 09.05.2025
Place:Wai

(Smruti S. Palsule)
3rd Jt. Civil Judge Junior Division, Wai.