

Sandip.. Vs. State & Ors.

Order Below Exh.205
(Dated : 03rd April, 2025)

01] Present application filed by plaintiffs for striking down the application filed by defendant no.24 and others below Exh.197 to 200. According to plaintiffs, already the ex-party order has been passed against the defendant no.24, dated 16/10/2014, below Exh.1 and the said ex-party order has not been set aside as on today. According to plaintiffs, therefore, the further participation in the proceeding of defendant no.24 has been excluded. According to plaintiffs, as on today, there is no written statement of defendant no.24 on record, therefore, the defendant no.24 cannot file counter claim on record. According to plaintiffs, the other counter claimant have not been impleaded in the suit as party defendants as on today, therefore, they also cannot file counter-claim on record. Therefore, the plaintiffs prayed for allowing the application and application vide Exh.197 to 200 be striked down.

02] Say of defendants was called for. The defendants have filed their say below Exh.206 and opposed the present application. According to defendants, the entire contents in the application under reply are totally false, therefore, they prayed for rejection of the application with costs. According to defendants, they have filed present say being the legal representative of deceased defendant no.20 and defendant no.24. According to defendants, in fact, the plaintiffs have wrongly mentioned the name of defendant no.24 in the suit. According to defendants, therefore, the suit summons has not been properly served on the right person. According to defendants, in fact, plaintiffs have not claimed any

specific relief against the defendant no.24 in the suit, therefore, the present application is not tenable in respect of defendant no.24. According to defendants, on going through the plaint it would be noticed that the plaintiff has specifically averred that the defendant no.20 has handed over the possession of suit property to defendant no.24. According to defendants, the plaintiffs have not been related to the suit property regarding ownership and possession since 1914. Therefore, defendants prayed for rejection of the application with costs.

03] Heard learned advocate for both sides.

04] Perused the record and documents filed on record in the light of arguments advanced. On perusal of record, it is noticed that, already the ex-party order has been passed against defendant no.24 on dated 16/10/2014, below Exh.1 and it is still intact as on today. Even it is not the contention of the defendants that they have set aside the said ex-party order against defendant no.24. In such circumstances, as the ex-party order is in existence against the defendant no.24, therefore, his participation in the suit is excluded.

05] Further, on perusal of record, it is noticed that the application vide Exh.197 to 200 have been filed by the applicant no.1 Ujwala Pandurang Mahindre Patil, applicant no.2 Nikhil Pandurang Mahindre Patil, applicant no.3 Gauri Nilesh Divte along with defendant no.24 regarding the suit property. On going through record, it is noticed that the present applicant no.1 to 3 are the legal heirs of deceased defendant no.20 Pandurang Marotrao Patil. It appearing from record that the said fact is not disputed by the either side. On perusal of record, it is noticed that the plaintiffs themselves have filed on record the application vide Exh.193 for condoning the delay and taking on

record the legal heirs of the deceased defendant no.20. On going through the said application vide Exh.193, it is noticed that the plaintiffs have mentioned above applicant no.1 to 3 as the legal heirs of deceased defendant no.20. Further, on perusal of record, it is noticed that the deceased defendant no.20 has filed on record his written statement vide Exh.53. In such circumstances, the applications vide Exh.197 to 200 are maintainable in respect of applicant no.1 to 3, being the legal heirs of the deceased defendant no.20. In such circumstances, in my opinion, the present application is liable to be partly allowed. Hence, I proceed to pass following order;

:: ORDER ::

01. Application vide Exh.205 is partly allowed.
02. The applications vide Exh.197 to 200 are struck down in respect of defendant no.24 only.
03. The applications vide Exh.197 to 200 be continued in respect of applicant no.1 to 3, being the legal heirs of deceased defendant no.20.
- 04 Costs in cause.

Dictated and pronounced in open Court.

Date : 03/04/2025.

(S. S. Aradwad)
Civil Judge Senior Division,
Darwha.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/order are same word for word as per original Judgment/order.

Name of Stenographer	R.H. Lokhande (Grade-II)
Court Name	Shri. S. S. Aradwad, Civil Judge Sr.Dn., Darwha, Dist. Yavatmal.
Date of Judgment/order	03-04-2025
Judgment/order signed by Presiding Officer on	03-04-2025
Judgment/order uploaded on	03-04-2025