

Spl.Civil Suit No. 36/2008
Suraji Atram Vs. State +7

ORDER BELOW EXH.143

(Passed on 18th June 2018)

This application is filed by defendants Nos.7 and 8 under Order 22, Rule 4(1) and (2) of the Code of Civil Procedure, 1908 (the Code) for substituting their names as legal representatives of deceased defendant no.4- Potibai, who died on 17-10-2017.

2) The facts in brief are that the plaintiff has filed the suit for partition, separate possession of the suit properties and declaration that sale deed dtd.25-09-2008 executed by defendant no.4 in favour of V.I.D.C. is not binding upon him. It is the contention of plaintiff that after death of Bhima Atram his wife Potibai- defendant no.4 adopted him as her son and executed registered adoption deed. In her written statement defendant no.4 took the plea that plaintiff's father was her Saldar, who got executed adoption deed before Sub-Registrar, Wani on the pretext that it was mortgage deed for agricultural loan and thereby played fraud. The plaintiff has been claiming joint ownership and possession with defendant no.4- Potibai.

03) After the death of Potibai on 17-10-2017, the plaintiff filed pursis at Exh.142 on 15-11-2017 that he is legal heir of deceased Potibai. It is stated in the instant application that Potibai executed registered will deed on 24-10-2008 at Sub-Registrar, Zari- Jamni in favour of defendant Nos.7 and 8. With such contention these defendants are seeking their substitution as legal representatives of deceased Potibai. The plaintiff strongly opposed the present application contending that defendant nos.7

and 8 can not be legal heirs of deceased Potibai. It is also stated the plaintiff being only legal heir of deceased Potibai, there is no need to bring the names of defendant nos.7 and 8 on record.

04) The learned counsel for defendant nos.7 and 8 filed the death certificate of deceased Potibai issued Gram Panchyat Matharjun and copy of registered power of attorney purports to have been executed by deceased Potibai in favour of these defendants. It is worth to mention that during the living of Potibai the plaintiff never claimed exclusive ownership for whole of the suit properties. He always contends having half share and joint possession over the suit properties. Under such circumstances, in case deceased Potibai had executed will deed in favour of defendant nos.7 and 8 then certainly they would be legal representatives for the suit properties, to the extent the Potibai had interest therein. Therefore, defendant nos.7 and 8 can be allowed to represent the estates of deceased Potibai. The plaintiff has every right to dispute the character of defendant nos.7 and 8 as legal representatives of deceased Potibai on merit. In the result, I pass following order :-

- 1) The application is allowed.
- 2) Names of defendant nos.7 and 8 be substituted as legal representatives of deceased defendant no.4- Potibai in respect of the suit properties, for which the will deed dtd. 24-08-2008 appears to have been executed.
- 3) " In the capacity of legal representatives of deceased Potibai" be mentioned against the newly substituted names of defendant nos.7 and 8.

Date : 18-06-2018

(Y. K. Rahangdale)
Civil Judge (Sr. Dn.),
Kelapur.