

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [CAS] No.313 of 2019
in
Second Appeal No.614 of 2007

Sau. Radhabai wd/o Kashirao Makode

vs.

Kausalyabai wd/o Namdeo Madne [Dead], through L.Rs.

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*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

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Court's or Judge's Orders

*Shri M.R. Joharapurkar, Advocate for the Applicants.
Shri M.G. Sharma, Advocate for the Appellant.*

CORAM : S.M. MODAK, J.
DATE : 6th SEPTEMBER, 2021.

This application is filed by the legatee of the alleged will of the deceased-appellant for impleading their names in place of the deceased-appellant. While filing that application, the present applicants described Haribhau as the only natural heir of deceased-appellant (as per their knowledge). Accordingly, notice was issued to Haribhau. Said Haribhau appeared and filed reply bearing Stamp No.1994/2020 to the application. In addition to his name, he has also given the names of five natural heirs of deceased-appellant.

02] The proposed legal heirs of Haribhau have moved Civil Application No.155/2020. In fact, at that time, learned Advocate was having the power only for respondent No.6-Haribhau. As power for rest of the proposed legal heirs could not be obtained, said Civil Application No.155/2020 was disposed of. Now, learned Advocate for applicant-Haribhau is desirous of filing fresh application describing Haribhau as the applicant

and describing other natural heirs as non-applicants. He wants two weeks' time to take necessary steps. It is granted.

03] The applicants in Civil Application No.313/2019 are desirous of impleading the natural legal heirs as described by the proposed legal heir Haribhau in his reply to the civil applications. The applicants are permitted to join all natural legal heirs of the deceased-appellant in this application. Once the amendment will be made, notice be issued to all of them.

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There is a request on behalf of the alleged legatee of the will to refer the matter to the trial Court for deciding, who are the legal heirs of deceased-appellant as contemplated under the provisions of Order 22 Rule 3 of C.P.C. The request can certainly be considered. However, the other part of the procedure about filing of the application by the proposed legal heir Haribhau needs to be complied with. Once it is done, an appropriate order as per Order 22 Rule 5 of C.P.C. will be passed.

The matter be kept after two weeks.

JUDGE

**sandesh*