

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.390 OF 2023

Bhagwan Lemchand Lohana ... Applicant

V/s.

Digvijaysingh Mansinghrao Naik

Nimbalkar (Dec.) Through Rajas

Digvijaysingh Naik Nimbalkar & Ors. ... Respondents

Digitally
signed by
VAIBHAV
RAMESH
JADHAV
Date:
2023.10.25
18:53:20
+0530

Mr. Sunny Udasi for the applicant.

Mr. Nikhil Wadikar with Mr. Malhar Pawar with Mr.
Nandu Pawar for respondent Nos.3 and 4.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 25, 2023

PC.:

1. By this revision application under Article 227 of the Constitution of India, the applicant-original plaintiff is challenging order dated 26th April 2023 rejecting application purportedly under Order 6 Rule 17 of the Civil Procedure Code, 1908, to bring legal representatives of defendant No.1 on record.

2. The applicant is original plaintiff who has filed suit for partition, declaration, injunction in relation to the suit properties. It appears that during pendency of the suit, i.e. on 23rd May 2011, defendant No.1 died. The legal representatives of defendant No.1 were brought on record. The wife and daughter was brought on record; however, son was not brought on record. During the course of hearing, learned advocate for the defendant raised an objection that all legal representatives of the deceased were not brought on

record. It was revealed that the son of defendant No.1 pre-deceased him. The son expired in the year 2006. He, therefore, filed an application to bring legal representatives of deceased son on record.

3. Since the son pre-deceased the defendant No.1 and the estate of defendant No.1 was already represented through wife and daughter, inability to bring son on record has no consequences on the continuance of the suit as the estate is sufficiently represented. However, as and by way of abundant precaution, the plaintiff has filed present application. Considering the fact that the plaintiff was unaware of the death of son of defendant No.1 and there is no material on record to indicate that the plaintiff despite being aware of death of son, had not brought him on record, in my opinion in the interest of justice the application ought to have been allowed the the Trial Court.

4. Hence, following order:

a) The impugned order dated 26th April 2023 passed by the 4th Joint Civil Judge, Junior Division, Phaltan, Satara in Regular Civil Suit No.340 of 2003 below Exhibit-356 is quashed and set aside.

b) The application below Exhibit-356 in Regular Civil Suit No.340 of 2003 stands allowed.

5. The civil revision application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)