



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

CIVIL APPLICATION (CAS) NO.168/2025
IN
SECOND APPEAL NO.179/2016

Shri Narayan s/o Mahadeorao Nikose and others

...Versus...

Laxmanrao S/o Mahadeo Nikose and another

Applicant : Bharat s/o Mahadev Nikose

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. V.A. Dhabe, Advocate for appellants
Mr. D.N. Mathur, Advocate for respondent No.1
Mr. D.C. Chahande, Advocate for intervenor/applicant

CORAM : ROHIT W. JOSHI, J.

DATE : 21/01/2026

1. This is an application filed under Order I Rule 10 (2) of the Code of Civil Procedure for addition of the name of applicant as respondent in second appeal. The controversy in the appeal pertains to partition of properties of one Mahadev Nikose, who died on 10/05/1984. The respondent No.1 - Laxmanrao and deceased Shengabai are the original plaintiffs. The present appellants and deceased respondent No.4 are original defendants. The plaintiffs had filed a suit for partition and separate possession being Regular Civil Suit No.159/1985. The said suit was dismissed by the learned Civil Judge, Junior Division, Saoner vide judgment and decree dated 24/04/1992. Aggrieved by the dismissal of suit, original plaintiffs (respondent No.1 and deceased Shengabai) filed Regular Civil Appeal No.197/1992. The said appeal was

initially dismissed vide judgment and decree dated 06/03/2000. However, Second Appeal No.204/2000, preferred by the original plaintiffs was allowed on 08/07/2014 and the appeal was remanded to the learned first Appellate Court to hear and decide the same on merits. Accordingly, after remand, the learned District Judge – 8, Nagpur has vide judgment and decree dated 02/05/2015 allowed the appeal, holding that the plaintiff (respondent No.1) and defendant Nos.1 to 3 (appellant Nos.1 to 3) had 1/4th share each in the suit properties. The present second appeal is filed by the original defendants, challenging the decree passed by the learned first Appellate Court.

2. It will be pertinent to mention here that plaintiff No.2 -Shengabai died on 02/05/2005 while Second Appeal No.204/2000 was pending before this Court. It appears from paragraph 17 of the judgment, passed by the first Appellate Court that the said second appeal came to be dismissed with respect to Shengabai since application for bringing legal heirs was not filed. The plaintiff No.1 alone prosecuted Regular Civil Appeal No.197/1992 after its remand.

3. In this backdrop, the present application is filed under Order I Rule 10 (2) of the Code of Civil Procedure by the applicant, who claims to be son of original owner Mahadev and plaintiff No.2 - Shengabai.

4. At the outset, it must be stated that there is no positive statement by the applicant that he was not aware

about the ongoing litigation. He has, however, stated in paragraph 7 of the application that on receiving notice from the office of Naib Tahsildar, Saoner, he got knowledge about the present second appeal. Although such statement is made with respect to knowledge of second appeal, the applicant has not made any statement that he was not aware about filing of the civil suit.

5. The applicant has filed his Aadhar Card on record, in which his name is mentioned as “Bharat Mahadev Nikose” and his date of birth as “01/04/1943”. Apart from this Voter ID Card, issued by Election Commission of India, transfer certificate issued by Headmaster of the Zilla Parishad Primary School, Maregaon, dated 28/10/2009 and typed copy of extract of service book are filed on record, in which his name is mentioned as “Bharat Mahadev Nikose”. In all these documents, except Voter Card his date of birth is mentioned as “01/04/1943”.

6. In this regard it will be appropriate to refer to the judgment of the learned first Appellate Court, where it is specifically stated in paragraph 5 that Shengabai (plaintiff No.2) was initially married with one Khushalrao Wahane, who died in the year 1945 and that thereafter the plaintiff No.2 married with Mahadev somewhere in the year 1947. It is also stated that Shengabai (plaintiff No.2) had two children from her first marriage with Khushalrao, namely, Krishna and Bharat. Bharat is the first name of the present applicant.

7. I have perused the copy of deposition of Shengabai in the civil suit, where she has stated that her marriage with Mahadev was solemnized somewhere around the time when India became independent. This implies that according to Shengabai (plaintiff No.2), her marriage with Mahadev was performed somewhere in the year 1947. She has also stated that her first husband had expired somewhere around the year 1945. It will also be pertinent to state that Shengabai has stated in her evidence that prior to her marriage with Mahadev she had two children begotten from her first marriage with Khushalrao Wahane.

8. As stated above, in the documents filed on record by the applicant, his date of birth is mentioned as "01/04/1943". He claims to be son of Mahadev and Shengabai (plaintiff No.2). As stated above, Shengabai has herself stated that she had two children begotten from her first marriage, her first husband expired in the year 1945 and she married with Mahadev in the year 1947. These facts, which have come on record, will indicate that *prima facie*, the applicant cannot claim to be son of Mahadev and Shengabai. It also needs to be stated that the documents on which the applicant places reliance to contend that he is son of Mahadev and Shengabai are recent documents. Copy of service book is also typed copy. Likewise, leaving certificate is obtained in the year 2009. Having regard to fact that the applicant claims to be born on 01/04/1943, while Shengabai's first husband was alive and more importantly before her alleged married with Mahadev, the contention of applicant that he is son of Mahadev and

Shengabai is improbable.

9. Likewise, the applicant, as stated above, has not made positive statement that he was not aware about the ongoing litigation with respect to partition, which is pending since the year 1985.

10. In view of the aforesaid, Civil Application is liable to be rejected and is rejected accordingly. It is, however, clarified that the findings recorded above are tentative and *prima facie* findings for the purpose of deciding the present application. Since the applicant is not party to the present litigation, adjudication in the appeal will obviously not be binding on him.

(ROHIT W. JOSHI, J.)