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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.456 OF 2015

Balasaheb Govindrao Takte,
Age: 65 years, Occu: Agriculture,
R/o Khandale, Taluka : Rahuri,
District : Ahmednagar

..PETITIONER
(Orig. Plaintiff No. 6)

VERSUS

1. Nivrutti Changdeo Kate,
Age: 60 years, Occu: Agriculture,
R/o Dhotre, Taluka : Kopargaon,
District : Ahmednagar

Vitthalrao Khanderao Chavhan, deceased
through his legal Representatives:

2. Vishwas Vitthalrao Chavhan, Age: 64 years
3. Vilas Vitthalrao Chavhan, Age: 58 years
4. Sanjay Vitthalrao Chhavhan, Age: 47 years
5. Pradeep Vitthalrao Chhavhan, Age: 42 years
6. Smt. Rukhminibai Vitthalrao Chhavhan, Age: 74 years

All agriculturists by occupation and residents of
Dhotre, Taluka: Kopargaon, District : Ahmednagar

7. Sau. Rajani Umesh Shinde,
Age: 43 years, Occu: Household,
R/o Flat No. 4, Aman Apartment
Gaikwadnagar, Behind Bus Stop
Nasik
8. Sau. Mangal Gorakh Barge,
Age: 40 years, Occu: Household,
R/o Shingwe, Taluka : Rahata,
District : Ahmednagar

Ganpatrao Khadera Chhavhan, deceased
through his legal Representatives:

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9. Sambhaji Ganpat Chavhan, Age: Major,
10. Usha Sharadrao Deshmukh,
Age: Major, Occu: Household,
R/o Ghane, Taluka : Malegaon,
District : Nasik
11. Veena Somnath Deshmukh,
Age: Major, Occu: Household,
R/o Jakhuri, Taluka : Sangamner,
District : Ahmednagar
12. Snehal Sureshrao Deshmukh,
Age: Major, Occu: Household,
R/o. Nagothane, Taluka : Roha,
District : Raigad
13. Pratap Khanderao Chavhan,
Age: 63 years, Occu: Agriculture,
R/o Dhotre, Taluka : Kopargaon,
District : Ahmednagar

..RESPONDENTS

Mr C. V. Korhalkar, Advocate for petitioner;
Mr S. S. Chapalgaonkar, Advocate for respondent Nos. 9 and 13

CORAM : N.W. SAMBRE, J.**DATE : 18th November, 2015****ORAL ORDER :**

The petitioner – original plaintiff no.6 first suffered an order dated 4th July, 1985, whereby legal representatives of plaintiff - defendants no.7 to 9 were permitted to be impleaded, keeping their right to contest the said status as legal representatives of plaintiff to litigation, open. Thereafter in 2006, an order of transposition was passed and thereafter the petitioner questioned the said order of transposition by moving an application Exh.227, in Regular Civil Suit No.726 of 1980, which is landlord – tenant dispute. In the said application, the petitioner alleged that in view of the conflicting interest of the petitioner and original defendants no.7 to 9,

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who were permitted to be transposed, the said parties need to be either restored to their original position, i.e. defendants no.7 to 9 or be deleted.

2. The application to that effect came to be rejected by a detailed reasoned order dated 12th December, 2014. Thus, the present petition.

3. Mr Korhalkar, learned Counsel appearing on behalf of the petitioner would urge that the right of original defendants no.6 to 9, *qua* the contest in the suit should have been proved then and there only, in relation to their status as legal heirs of the plaintiff. He would then urge that in view of the conflict of interest between the legal representatives of original plaintiff, i.e. the petitioner and defendants no.7 to 9, all the parties cannot be permitted to pursue the suit and it will be in the interest of justice that the respondents herein be directed to prove their right to contest the suit in the capacity of legal representatives of original plaintiff.

4. While opposing the submissions and prayer made in the petition, Mr Chapalgaonkar, learned Counsel appearing on behalf of the respondents no.9 and 13, would urge that the issue is sought to be pressed at a belated stage, as according to him, the order which was passed on 4th July, 1985, referred supra, was never challenged by the petitioner, leave apart order of 2006 by which defendants no.6 to 9 were impleaded as plaintiffs. He would then urge that the Court, in view of the order passed on 4th July, 1985 will ascertain the status of the respondents as legal representatives of original plaintiff and then will pronounce the appropriate verdict in the matter.

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5. Having bestowed my anxious thought to the rival submissions, it is required to be noted here that the order dated 4th July, 1985 and the order passed thereafter on 21st January, 2006 permitting the present respondents to be impleaded as successors of original plaintiff was never challenged. It is only by virtue of present application Exh.277, the challenge is sought on the above referred ground, that too at a belated stage, without any reasonable explanation. Apart therefrom, in my opinion, the interest of the petitioner is taken care of by the order dated 4th July, 1985, particularly in the matter of locus of the respondents herein to contest the suit in the capacity of plaintiff.

6. In the light of above, no case for interference is made out. Writ Petition stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj