

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

CRA NO. 85 OF 2014

BABULAL@DHANRAJ DULICHAND PUROHIT(MARWADI) DIED
SHANTABAI DIED LRS ANUSAYA NIVRUT
VERSUS
BABULAL@DHANRAJ DULICHAND PUROHIT(MARWADI) DIED LRS
SURAJKUMAR AND OTHERS

...

Advocate for Petitioners : Dagadkhair D.K.
Advocate for Respondents : Mr. Brahme Shailesh P. Adv For 1a To 1c
Adv. Mr. Patil Pradip R For R/2-a To 2-c

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CORAM : S.V.GANGAPURWALA,J.

DATED : 12TH OCTOBER, 2015

ORDER :-

The order rejecting application Exh.41 in Appeal No.242/2004 is assailed.

2] Mr.Dagadkhair, learned counsel submits that the Court has failed to follow procedure as is laid down under Order 22 Rule 5 of C.P.C. The learned counsel submits that the applicants are the daughters of deceased Shantabai. On her death, they were required to be brought on record as Legal Representatives of deceased Shantabai. The learned counsel submits that if procedure under Order 22 Rule 5 of C.P.C. would have been followed, then the petitioners would have led evidence to that effect. Opportunity has not been given to lead the evidence. According to the learned counsel, now that the appeal has been remitted back to the trial

Court, the petitioner be given opportunity to apply afresh before the trial Court.

3] Mr.Brahme, learned counsel for the respondents supports the order.

4] Mr.Patil, learned counsel submits that the petitioners are the legal heirs of deceased Shantabai and also Babulal.

5] With the assistance of learned counsel, I have gone through the order. No doubt if an application is made for bringing on record and legal heirs of the deceased in appeal, an enquiry under Section 22 Rule 5 of CPC is contemplated. But for the said purpose, the applicants should prima facie show their relation with the subject matter of the dispute. Shantabai is said to be wife of deceased Babulal. The present petitioners claim themselves to be the daughters of Shantabai but in the application which is made, there is not even whisper that they are daughters of Baburao. As per Section 15 (2) (B) of the Hindu Succession Act, any property inherited by a female Hindu from her husband shall devolve in absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in Sub Section 1 in the order specified therein but upon the heirs of the husband. In the present case, there is nothing on record to even remotely suggest that the present applicant are the legal heirs of Babulal. It was for the applicant to atleast plead that aspect in the application in absence thereof. The said application certainly could not have been considered.

6] Be that as it may. Any order passed below Exh.41, or any order passed under the heirship certificate cannot operate as

resjudicata. If the petitioners so wish, they can agitate their right in a substantive manner. However, in the present application, as there is not even whisper about the claimants themselves to be the legal heirs of Babulal, the said application cannot be considered.

7] In light of above, Civil Revision Application is disposed of. No costs.

[S.V.GANGAPURWALA,J.]

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