

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

WRIT PETITION NO. 12479 OF 2015

Shri Deepak Baburao Dangale
and Anr

..Petitioners

Vs

Smt. Parvatabai Arjun More and
Ors

.. Respondents

Mr.Sachin Gite, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.
DATE : 18/12/2015

PC:

1. Not on Board. At the request of Mr. Gite, taken up for admission. Heard Mr. Sachin Gite, learned counsel for the petitioners.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'third parties', have challenged the judgment and order dated 1.10.2015 (wrongly typed as 1.10.2014) passed by the learned Ad-hoc District Judge-1, Nephad below Exh. 36 in Misc.Civil Appeal No.41 of 2010, By that order, the learned District Judge rejected the application made by third parties for adding them as parties in the Appeal.

3. Mr Gite strenuously contended that third parties claim that original respondent-Parvatibai Gangaram Shinde had died on

22.10.2010. During her life time, she executed Will in favour of third parties. The Will is registered on 15.2.2006 before the Sub-Registrar, Nephad. He submitted that Parvatabai, respondent no.1 in appeal had died leaving behind third parties as her legal representatives, it is absolutely necessary to add them in the appeal. He submitted that the third parties have also filed application in the trial Court on 29.1.2014 for similar reliefs and the same is pending. By the impugned order, the learned District Judge rejected the application. Mr. Gite submitted that in the relevant revenue record, third parties name appear and even on this ground also they are necessary party as they have interest in the suit property.

4. Learned District Judge after hearing both sides has rejected the application. In paragraph 5, learned District Judge noted that the third parties have filed application in the trial Court for similar relief and is pending in the trial Court. It will be, therefore, proper for them to prove the application filed before the trial Court for adding them as parties. Third parties are relying on the alleged Will executed in their favour. Unless and until they establish their rights by proving the alleged Will, they cannot be said to be necessary parties in the appeal. It was further noted that third parties were knowing about pendency of the appeal, however they did not file such application earlier which clearly shows that

third parties want to prolong matter and nothing else. I do not find that the learned trial Judge committed any error. As noted earlier, Parvatabai died on 22.10.2010 and the present application is made on 29.1.2014 in District Court. They also filed application in the trial Court on 29.1.2014 for similar relief. The said application is still pending. Third parties should have pursued for disposal of the application pending in the trial Court. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. It will be also open to third parties to file petition for review of the order dated 1.10.2015 in case their application pending in the trial Court is allowed. They can also apply for review of the order in case District Court allows the Appeal. Subject to this, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)