

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

WRIT PETITION NO.4664 OF 2015

Babasaheb Vishwanath Agre & ors. ... PETITIONERS

VERSUS

Shantabai Vishwanath Agre & ors. ... RESPONDENTS

.....
Shri A.S. Sawant, Advocate for petitioners
Shri R.L. Kute, Advocate for respondent No.1
Shri P.S. Dighe, Advocate for respondent Nos.2 to 5
.....

CORAM: S.V. GANGAPURWALA, J.

DATED: 23rd March, 2016.

ORAL ORDER :

1. The application for addition of a party is allowed. Aggrieved thereby, the original plaintiff has filed the present petition. Mr. Sawant, the learned counsel for petitioner strenuously contends that the petitioner has filed the suit for declaration of ownership on the basis of will executed by deceased Kondabai. The respondent Nos.2 to 5 who have filed

application for addition of party, are in no way concerned with the will. The respondent Nos.2 to 5 till date have not challenged the will. If respondent Nos.2 to 5 have any grievance with regard to the will, they can challenge the same by way of independent proceedings. According to the learned counsel, even the respondent Nos.2 to 5 have not been granted any succession certificate. The learned counsel submits that the plaintiff is the master of his own suit. The respondent Nos.2 to 5 cannot thrust themselves upon the plaintiff. Considering the relief claimed, respondent Nos.2 to 5 are not necessary parties.

2. Mr. Dighe, the learned counsel for respondent Nos.2 to 5 supports the order.

3. I have also heard Mr. Kute, the learned counsel for respondent No.1.

4. Order I Rule 10(2) gives power to the Court to add necessary or a proper party. The respondent Nos.2 to 5 are sisters of deceased Kondabai. They are Class II heirs. It is stated that, the deceased Kondabai has not left any Class I legal heir. The deceased Kondabai is said to be the maternal aunt of the present petitioner/ original plaintiff. In the event the will is

not proved, the sisters of deceased Kondabai will get some right. The plaintiff is claiming on the basis of will executed by deceased Kondabai, which will have to be proved by examination of attesting witness. These respondents will have right to impeach the said will. It cannot be said that the respondent nos.2 to 5 are not interested parties.

5. Considering the above, the trial Court has properly exercised the discretion. As such, the Writ Petition is dismissed.

(S.V. GANGAPURWALA, J.)