

Sequeira

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

WRIT PETITION NO. 5095 OF 2011

Shri Chetandas Ganjanmal Ubhrani & anr. .. Petitioners

Vs

Shri Sadashiv Punjaji Jadhav & ors. .. Respondents

Mr.P.B.Shah, for Petitioners.

Mr.Sachin B.Gite, for Respondents No.1.

***CORAM : N.M.Jamdar, J.
Tuesday, 18 October 2016.***

P.C. :

Writ Petition is pending since the year 2011. The challenge by Petitioners is to the order 5 April 2011 passed by the learned Civil Judge Junior Division Nasik Road, wherein the application of Petitioner No.1 to join him as party – judgment debtor in the execution proceedings has been rejected.

2. Pursuant to the decree passed in the suit instituted by the Respondents-Plaintiff is entitled to 1/3rd share in the suit property, Petitioners are claiming to have purchased the property from Respondent No.10 / original Defendant No.9. It is not in dispute that pursuant to the decree the predecessor-in title of Petitioners is entitled to a share. It is the contention of the learned counsel for Petitioners that all that the Petitioner No.1 seeks to add is to substitute himself in the place of his predecessor i.e. Defendant No.9.

3. The learned counsel for Petitioners asserts that all Respondents are served, since Respondent No.10 (Defendant No.9) has not come forward to controvert the assertion of Petitioner that the Petitioner is entitled to a share the Respondent No.10 is entitled under the decree. I am of the opinion that the Petitioner can be permitted to participate in the execution proceedings only to the extent of the claim of Respondent No.10 (Defendant No.9).

4. Accordingly the Petition is disposed of by as follows : The Respondents – Plaintiff will join Petitioner No.1 as party in the execution proceedings. It is made clear that the impleadment of the Petitioner is only for the purpose of the claim of Respondent No.10 -Defendant No.9 under the decree. It is clarified that this impleadment will be only in the above circumstances and will not affect the claim of Respondents-Plaintiff to 1/3rd share under the decree. The learned Civil Judge, Nasik Road, after impleadment, will accordingly proceed to execute the decree as per law. Writ Petition is disposed of in above terms.

(N.M.Jamdar, J.)