

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10451 OF 2014**

Sou Avita Vasudev Potdar)
Age 34 Yrs. Occ. Household)
R/O Village Kognoli,)
Tal Kavathe Mahankal Dist Sangli) ..Petitioner

Vs.

1 Sou Mangal Mohan Potdar)
Age 48 Yrs. Occ. Household)
R/O Kumathe, Tal Tasgaon)
Dist Sangli)

2 Shri Bapu Babu Potdar)
Age 74 Yrs. Occ. Agriculture)
R/O Village Kognoli,)
Tal Kavathe Mahankal Dist Sangli)

3 Shri Keshav Babu Potdar)
Age 59 Yrs. Occ. Agriculture)
R/O Village Kognoli,)
Tal Kavathe Mahankal Dist Sangli)

4 Shri Ganpati Babu Potdar)
Age 54 Yrs. Occ. Agriculture)
R/O Village Kognoli,)
Tal Kavathe Mahankal Dist Sangli)

5 Smt Babutai Ramchandra Potdar)
Age 56 Yrs. Occ. Household)
R/O Daulatnagar, Rajarampuri)
14th Lane, Dist Kolhapur)

6 Sou Suman Yashwant Potdar)
Age 66 Yrs. Occ. Household)
R/O Varachi Galli, Jog Mala)
Tasgaon, Tal Tasgaon Dist Sangli)

7 Shri Tanaji Hanamant Pawar)
Age 37 Yrs. Occ. Agriculture)
R/O Village Kognoli,)

Tal Kavathe Mahankal Dist Sangli)

8 Sou Vimal Hanamant Pawar)
Age 56 Yrs. Occ. Household)
R/O Village Kognoli,)
Tal Kavathe Mahankal Dist Sangli)

9 vividh Karyakri Society Ltd)
Village Kognoli,)
Tal Kavathe Mahankal Dist Sangli)
through Chairman / Secretary)

10 Youth Development Co-operative)
Society, Salagare, Tal Miraj)
Dist Sangli, Through Manager)

11 Sainik Sahakari Bank Ltd.)
Satarat Branch Kavathe Mahankal)
Dist Sangli, Through Manager)

..Respondents

Mr. Vijay Killedar for the Petitioners

Mr. Sandesh Patil i/b Ms Monica Kshirsagar for the Respondent Nos.3, 7 and 8

CORAM : R. M. SAVANT, J.
DATE : 13th OCTOBER, 2016

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order dated 2-8-2014 passed by the Learned Joint Civil Judge Junior Division, Kavate Mahankal, District Sangli, by which order the application Exhibit 49 filed by the Petitioner under Order I Rule 10 of the Civil Procedure Code, for

bringing herself on record as the heir of the deceased Plaintiff No.1 Rangubai Potdar came to be rejected.

3 It is not necessary to burden this order with unnecessary details having regard to the nature of the controversy involved. Suffice it would be to state that the said Rangubai Potdar and Mangal Potdar had instituted a Suit for partition and declaration in respect of the properties which are mentioned in the said Suit. The said Rangubai Potdar executed a Will on 5-8-2013. In the said Will she had bequeathed property bearing Gat No.1 admeasuring 5 H and 22 Ares in favour of the Petitioner. It seems that the said Rangubai Potdar expired on 18-8-2013. The Petitioner therefore applied for her impleadment in the said Suit on the basis of the Will executed by the said Rangubai Potdar. The Trial Court i.e. the Learned Civil Judge Junior Division, Kavathe Mahankal, has rejected the application by the impugned order dated 2-8-2014. The gist of the reasoning of the Learned Judge is that the Petitioner herein cannot be impleaded in the place of Rangubai Potdar unless she obtains a probate in respect of the said Will. As indicated above it is the said order dated 2-8-2014 which is taken exception to by way of the above Petition.

4 In so far as the said issue is concerned, whether a probate in respect of a Will in respect of properties situated outside the limits of the Ordinary Original Civil Jurisdiction of this Court is required to be obtained.

The said issue is no more res-integra and is covered by the judgment of a Learned Single Judge of this Court in the matter of **Vishnu Ramchandra Undage Vs. Ganpati Ramchandra Undage**¹ It has been held by the said judgment that the probate of a Will in respect of the properties situated outside the limits of the Ordinary Original Civil Jurisdiction of this Court is not necessary to be obtained. Having regard to the said legal position, the impugned order passed by the Trial Court which is based on the said fact cannot be sustained. The Learned Counsel Mr. Patil appearing on behalf of the Respondent Nos.3, 7 and 8 fairly does not dispute the said position. The impugned order dated 2-8-2014 is accordingly quashed and set aside, the application Exhibit 49 would resultantly stand allowed. Amendment to be carried out in the Plaint within 6 weeks from date.

5 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]

¹ 2006(1) Bom C.R.672