

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO. 4782 OF 2013
WITH WP/4776/2013

SANGITA TANAJI DEVKATE AND OTHERS
VERSUS
SOPAN SADASHIV MAHANVAR, L.RS. DURGABAI AND ANOTHER

...
Advocate for Petitioners : Mr. P.P. Mandlik h/f. Gandhi Amol S.
Advocate for Respondents : Mr. N.S. Tekde for R/1. In wp 4776/13
...

CORAM : S.V. GANGAPURWALA, J.
DATE : 29.08.2017

P.C. :

. Inspite of the fact that respondent nos. 1 and 2 are served even after notice of final disposal, none appears for the respondent no.2 in writ petition no. 4776/2013 and inspite of notice being served in 4782/2013, none appears for the respondents.

2. The application filed by the petitioner for bringing on record legal heirs of deceased Sopan is rejected. The petitioner sought to bring on record Dropadabai as legal heir of deceased Sopan on the ground that she is the second wife, the first wife and the childrens from the second wife are on record.

3. Mr. Mandlik, the learned counsel for the petitioner states that, if there is dispute with regard to legal heirs, inquiry under Order 22 Rule 5 of the Civil Procedure Code can be resorted to, without resorting to provisions of Order 22 Rule 5 of the Civil Procedure Code, the Court ought not to have rejected the

application.

4. The trial Court has rejected the application for bringing on record Dropadabai as a legal heir of deceased Sopan only on the ground that the first wife and the children from the second wife are already on record and Dropadabai would not be a class-I heir.

5. There is nothing on record to show that Dropadabai is not the legally wedded wife. The marriage if had taken place prior to 1955, even if the same is a second marriage of deceased Sopan would be legal and valid. However, the finding on the same can only be given, if the Court conducts an inquiry under Order 22 Rule 5 of the Civil Procedure Code.

6. In light of the above, the impugned orders are quashed and set aside. The Court shall decide the application for bringing on record Dropadabai as legal heir of deceased Sopan after conducting an inquiry under Order 22 Rule 5 of the Civil Procedure Code. Writ petitions accordingly stand partly allowed. No costs.

(S.V. GANGAPURWALA)
JUDGE

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