

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

WRIT PETITION NO.7 OF 2015

Hirabai @ Lahanubai W/o
Kerunath Ghogare and others. ...Petitioners.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.R.N.Dhorde, Senior advocate holding for
Mr.V.R.Dhorde, advocate for the petitioners.
Mr.P.S.Patil, Additional Government Pleader for
the State.
Mr.Abhijeet B.Kale, advocate for Respondent
Nos.6A to 6C, 7A and 7B.

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CORAM : S.V.GANGAPURWALA J.

Date : 12.12.2017.

PER COURT :

1. Mr.Dhorde, learned Senior advocate for the petitioners submits that the petitioners herein have filed a suit bearing RCS No.367/2013 for relief of partition, separate possession and also have challenged the will deed allegedly executed by Sakhubai in favour of her four grand

children. Learned Senior advocate submits that in the earlier litigation filed by the present Respondent No.9, the present petitioners were not parties. Even Sakhubai was a party died during pendency of the appeal. The petitioners were not brought on record as legal heirs. In absence of the petitioners, the findings arrived at by the District Judge in the proceedings filed by the present Respondent No.9 would not bind the petitioners. The learned counsel submits that legal heirship certificate is already issued in favour of the petitioners by the competent Court under the Bombay Regulation Act. As per the guidelines and the Rules applicable for allotment of land U/s 28-1AA of the Maharashtra Agricultural Ceiling on Holdings Act, only legal heirship certificate is required. The same is produced by the petitioners, still, the authority has directed allotment of land to the Respondents. The will deed on the basis of which the Respondents are claiming the right is under cloud and subject matter of a suit before the Civil Court. According to learned Senior advocate, the authority can not adjudicate upon

the dispute of the legal heirs. It is for the Civil Court to decide the same issue. The learned Senior advocate further submits that even otherwise Sakhubai did not have the authority to execute the will as the said property is an ancestral property. The suit is already pending before the Civil Court. The interim orders passed by this Court be continued till disposal of the suit.

2. Mr.Kale, learned counsel for Respondent Nos.6A to 6C, 7A and 7B submits that the writ property was the subject matter of earlier suit filed by Respondent No.9 bearing RCS No.126/1992. The suit was partly decreed. The appeal filed by the Respondent Nos.8 and 9 herein was dismissed. In the appeal the dispute arose about the genuineness of the will deed executed by Sakhubai. The appellate Court referred the issue to the trial Court and finding was solicited from the trial Court about the genuineness of the will. The trial Court gave a finding that the will in question is a genuine will. According to learned advocate, all these facts are considered

by the authority while allotting the writ land to these Respondents.

3. It appears that the present petitioners were aware of the will-deed executed by Sakhubai while they filed application for legal heirship certificate. It is a fact that present petitioners were not parties in the suit filed by present Respondent No.9. So also were not parties in the appeal. Certainly, the petitioners would have right to agitate about the will. The judgment in the earlier proceedings may only be corroborative in nature and may be relevant piece of evidence as per Section 42 to 44 of the Indian Evidence Act.

4. Under the impugned order, the writ land has been allotted to Respondent Nos.6A, 6B, 7A and 7B. These are the Respondents in whose favour the will-deed is executed by Sakhubai. The land allotted by the authority is lying barren and without any use. It will be in nobody's interest to keep the property idle. The suit filed by the petitioners is pending. The

interest of the petitioners will have to be protected. Balance will have to be struck and equities adjusted.

5. Considering that it will be in nobody's interest to keep the land barren and at the same time protecting the interest of the present petitioners, I deem it appropriate to give possession to the Respondent Nos.6A, 6B, 7A and 7B to whom the property is allotted by the authority in the capacity of 'Receiver' appointed by the Court. These persons will submit the half yearly account to the trial Court. The trial Court shall issue a formal order appointing these present Respondent Nos.6A,6B, 7A and 7B as Receivers of the suit property bearing S.No.267. In case the suit of the present petitioners is decreed in their favour then the trial Court will pass further orders with regard to the possession of the property bearing S.No.267 along with the decree. In case the suit is dismissed, no further orders will be required to be passed by the trial Court with regard to possession of these Respondents.

The trial Court shall endeavour to decide the suit expeditiously, preferably within nine (9) months. The parties shall cooperate in expeditious disposal of the suit.

6. With these observations, the Writ Petition stands disposed of. No costs.

(S.V.GANGAPURWALA, J.)

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