

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

WRIT PETITION NO. 2251 OF 2016

Ninad Shivaji Naik & ors. ... Petitioners.

Versus

Prasad Ganpatrao Naik & ors. ... Respondents.

Mr. Rajesh S. Datar, advocate for petitioners.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : OCTOBER 3, 2017**

P.C.:

1 Heard the learned Counsel Shri Datar, for the petitioner.

2 Being aggrieved by the order dated 28/9/2015, the
Petitioners have filed this petition. The present Petitioners had filed
application to implead themselves as parties to the Special Civil Suit
No. 1043 of 2006. The present Petitioners happens to be the sons of
Sulochana Naik and Sulochana happens to be the real sister of Dr.
Indu Dattatraya Naik. The subject property is self acquired property

of their father Shri Dattatraya Naik and the Petitioners herein happen to be grand-son of Dattatraya Naik.

3 It is the case of the Petitioners that Dr. Indu Dattatray Naik had prepared a will and left the property of her share to her caretaker. The caretaker had filed an application for probate, but due to intervention of the present petitioners who desires to contest the said application, it was registered as Special Civil Suit No. 1043/2016.

4 The learned 4th Joint Civil Judge, Senior Division, Pune had considered the application filed by the Petitioners. However, it was clear that the application was signed by one Arif N. Shaikh as power of attorney holder. The affidavit in respect of power of attorney was also filed by Arif N. Shaikh. It is pertinent to note that the said document showing the power of attorney was not filed on record. The vakalatnama which was filed at Exh. 146 was also in the individual capacity by Arif Shaikh and not as a power of attorney of

the present petitioners. In fact, the petitioners had individually appeared in the said application, but had not submitted their objections and therefore, by an order dated 18/1/2002 the suit was directed to proceed without their objections. The said order was not set aside. Learned Civil Judge Senior Division had observed that Arif Shaikh had no authority to submit the said application as the application was not filed on record by the present petitioners and hence, earlier order was set aside way back on 18/1/2002. The Petitioners had then renewed their prayer by filing review petition. The learned Special Judge has rejected the said application as the review petition was not maintainable. In fact, the Petitioners had prayed for setting aside the exparte order and again moved an application on 4/2/2015 for arraigning them as defendants. The said application was disposed of.

5 Prima facie, it can be seen that except vakalatnama, the Petitioners have not filed any objections in the said proceedings. They had waived the opportunity given to them by the court by

arraigning them as third parties. It cannot be said that they were already impleaded as third party respondents. The earlier application filed by them below Exh. 153 was disposed of for want of prosecution and the proceedings were never restored to file. The learned Civil Judge has rightly observed that there was no error apparent on the basis of the record, which can contemplate the review petition.

6 In any case, the said application was filed beyond limitation and therefore, review petition was not maintainable. The earlier order was not even challenged by the Petitioners before any other forum or before the High Court. Hence, the learned Special Judge by an order dated 28/9/2015 has rightly rejected the said application filed below Exh. 157 in Special Civil Suit No.1043 of 2006.

7 The reasons recorded by the Special Judge do not contemplate any interference by this court in the interest of justice. The Writ Petition itself is not maintainable. However, in the interest

of justice, the Petitioner would be at liberty to avail of any alternative remedy as is advised.

8 With these observations, the Petition stands dismissed.
Rule stands accordingly discharged.

(SMT. SADHANA S. JADHAV,J)