

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

WRIT PETITION NO. 3790 OF 2017

**PRAKASH PANDURANG PALODKAR
VERSUS
SUBHADRA BAI BALAJI KADAM AND OTHERS**

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Advocate for the Petitioner : Shri M. V. Ghatge
Advocate for Respondent Nos. 1 to 3 : Shri S. S. Panale

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 18th JULY, 2018.**

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PER COURT :

1. While assailing the impugned order dated 15/06/2016 at page 61 of the petition paper book, both the learned Advocates for the respective sides rely upon a family tree at page 48, which was set out in application Exhibit 81 while seeking impleadment of the grand daughter of plaintiff No.1 as the L.R. of plaintiff No.3.

2. The learned Advocate for the original plaintiffs relies upon Section 15(1) (b) of the Hindu Succession Act, 1956 which provides, as a second option, for the heirs of the husband to be the L.R. of a female Hindu who died intestate and the property of such a deceased female would devolve

upon such heirs of the husband.

3. I find from the family tree that Satyashila, daughter of plaintiff No.1 Subhadrabai, therefore, will get the first right to be the heir of deceased plaintiff No.3 Padminbai in view of Section 15(1)(b). The Trial Court has permitted the daughter of Satyashila namely Varsha who is the grand daughter of plaintiff No.1, to be added as the L.R. of deceased plaintiff No.3. In this backdrop, I am of the view that probably the trial Court has lost sight of this family tree and has failed to note that before Varsha could be added as the L.R. of deceased plaintiff No.3, Satyashila being alive might get the first right.

4. In view of the above, this petition is partly allowed. The impugned order dated 15/06/2016 passed on application Exhibits 84 and 87 is set aside and both the applications are restored in Regular Civil Suit No. 142/2011. The trial Court shall consider the contentions of all the litigating sides in the light of order XXII Rule 5 of the C.P.C. and Section 15(1)(b) of the Hindu Succession Act, afresh.

5. At this juncture, the learned Advocate for the petitioner - original defendant submits that order dated 15/06/2016 passed on application Exhibit 93 in RCS No. 50/2012 in which he is a plaintiff, can be set aside by his consent. Consequentially, the said order is also set aside and application Exhibit 93 is restored in RCS No. 50/2012 for being considered afresh alongwith application Exhibit 84 and 87 in RCS No. 142/2011.

(RAVINDRA V. GHUGE, J.)

shp/-