

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

WRIT PETITION NO. 5479 OF 2018

Shivraj Bhagwantrao Deshmukh

...Petitioner

Versus

Santoshi @ Pallavi Shivraj Deshmukh
and Ors.

...Respondents

.....

Mr. P.S. Paranjape, Advocate for Petitioner

.....

CORAM : MANISH PITALE, J.

DATE: 29th SEPTEMBER, 2018

PER COURT :

1. Heard Mr. Paranjape, the learned Counsel appearing on behalf of the petitioner.

2. The petitioner is the original defendant No.1 in a suit for partition and separate possession filed by the respondents wherein defendant No. 2 was the maternal uncle of the respondent herein. It has come on record that defendant No. 2 expired during the pendency of the said suit. It is also relevant that the said defendant No. 2 did not care to respond to the summons issued by the Court, and therefore, by order dated 09.04.2013, the Court below passed an order proceeding ex-parte against the said defendant No.2. Upon the death of

defendant No.2, the plaintiff (respondent herein) moved an application for bringing on record legal heirs of defendant No.2, which has been opposed by the petitioner (defendant No.1) and filed his say before the Court.

3. By the impugned order dated 23rd March, 2018, the Court below has issued notice to the proposed legal representatives of defendant No. 2 and it is this order issuing notice to the proposed legal representatives, which is made the subject matter of the present Writ Petition. The apprehension expressed on behalf of the petitioner is that the rights, if any of defendant No. 2 stood extinguished when the Court proceeded ex-parte against him and that there would be no propriety in bringing on record the legal representatives of the defendant No. 2. It is a matter of record that the application for bringing on record the legal representatives of defendant No. 2 is still pending before the Court below and the petitioner has already filed his say opposing the grant of such an application.

4. In this backdrop, I am of the opinion that the grievance raised by the petitioner is premature, as by the impugned order only notice has been issued to the proposed legal representatives of defendant No. 2. In that view of the matter, no case for exercise of writ jurisdiction has been made by the

petitioner. But, it is made clear that if any order is passed in the application for bringing on record legal representatives of defendant No. 2, which the petitioner finds adverse to his interest, he would be at liberty to challenge such an order. The Writ Petition is disposed of.

(MANISH PITALE)
JUDGE

mta