

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

53 WRIT PETITION NO. 6372 OF 2013

PRAYAGBAI W/O GANGARAM SAWANT AND OTHERS
VERSUS
SANGABAI W/O PUNDLIK SAWANT DIED LRS ARE ALREADY
ON RECORD IN THE CAPACITY OF PETITIONERS AND OTHERS

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Advocate for Petitioners : Mr. Gopal D. Kale
Advocate for Respondent No.2 : Mr. Amit Mukhedkar
AGP for Respondent No.3 : Mr. S. N. Morampalle

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CORAM : V. K. JADHAV, J.
DATED : 12th FEBRUARY, 2018

PER COURT:-

1. Heard finally by consent at admission stage.
2. Being aggrieved by the order passed by the learned Commissioner accepting the application seeking intervention filed by respondent no.2 herein, this Writ Petition has been preferred.
3. Brief facts giving rise to the present Writ Petition are as follows:

4. In the year 1998, deceased Sangabai had filed an application before the Tahasildar, Bhokar contending therein that though her deceased husband Pundlik had adopted the husband of the present petitioner no.1 and father of the petitioner nos. 2 and 3 as a son, during his lifetime, he had cancelled the said adoption and executed a will deed in respect of his property in favour of his two wives, namely, Chandrabai and deceased Sangabai. Chandrabai is predeceased to Sangabai. By the said application, deceased Sangabai had requested the Tahasildar, Bhokar to mutate the suit land in her favour on the basis of the will deed. The learned Tahasildar, Bhokar, by order dated 16th January, 1999, has rejected the said application. Being aggrieved by the same, deceased Sangabai has preferred Appeal before the Sub-Divisional Officer, Nanded and the Sub-Divisional Officer, Nanded, by order dated 14th February, 2000, allowed the said Appeal and set aside the order passed by the Tahasildar and directed that the name of deceased Sangabai be recorded as the owner of the suit land. Aggrieved by the same, the present petitioners have approached the Additional Collector, Nanded and the Additional Collector, Nanded, by order dated 20th

January, 2001, dismissed the said Appeal by confirming the judgment and order passed by the Sub-Divisional Officer, Nanded. Being aggrieved by the same, the present petitioners have filed R.O.R. Revision Petition No. 16 of 2001 before the Divisional Commissioner, Aurangabad. During pendency of the said Revision, deceased Sangabai died on 9th March, 2002. The said Revision is still pending. However, the present respondent no.2 has filed an application in the pending Revision for intervention. According to respondent no.2 herein, deceased Sangabai had executed a will deed in the name of her grand son, namely Baburao on 31st December, 1999, but due to misbehaviour and bad habits of Baburao, she cancelled the said will deed and made a second will and bequeathed the property including the suit property in favour of respondent no.2-original intervenor. According to the respondent no.2-original intervenor, on the basis of the said will deed dated 7th April, 2001, he became the owner of the suit property after the death of Sangabai. The learned Divisional Commissioner, by order dated 9th July, 2013, allowed the said application seeking intervention. Hence this Writ Petition.

5. The learned counsel for the petitioners submits that in the pending Revision, the Divisional Commissioner has directed the parties to maintain *status quo*. However, deceased Sangabai had executed a will deed, though there is an order of *status quo*, bequeathing the suit property in favour of the present respondent no.2-original intervenor. The same is contrary to the *status quo* order passed by the Divisional Commissioner and as such, on this ground alone, the Commissioner should have rejected the application filed by respondent no.2 seeking intervention in the matter. Learned counsel submits that once the registered adoption deed came to be executed in favour of the husband of petitioner no.1 and father of petitioner nos. 2 and 3 by the deceased husband of Sangabai, and both the wives of deceased Pundlik are also party to the said adoption deed, then, cancellation of such registered adoption deed is impermissible. However, the authorities below have not consider the same and even the learned Commissioner has also not considered the same while allowing the application seeking intervention in the matter. Learned counsel submits that the Commissioner, in that way, allowed respondent no.2 herein to create interest in the suit property. Learned counsel submits that respondent no.2, on the

basis of the will deed allegedly executed by deceased Sangabai during her lifetime in the year 2001, and even she died in the year 2002, placed it before the learned Divisional Commissioner only in the year 2011. However, the learned Commissioner has not considered the same and allowed the intervention application in a very casual manner.

6. The learned counsel for respondent no.2 submits that respondent no.2 has placed before the Divisional Commissioner a copy of the will deed and on the basis of the said will deed, his application seeking intervention is rightly allowed by the Divisional Commissioner. Learned counsel submits that it is to be noted here that till this date the petitioners have not challenged the said will deed before the Civil Court.

7. I do not find any substance in the submissions made on behalf of the petitioners that due to *status quo* directed to be maintained by the Divisional Commissioner in the pending Revision, deceased Sangabai was precluded from bequeathing her property to a person as named in her will deed executed by her during her lifetime. It is not necessary to mention here that

will deed always speaks after the death and as such, the *status quo* order would not prevent the person from bequeathing the property to any other person of her choice. It is always open for the petitioners to challenge the said will deed on the grounds as are available to them. However, on the basis of the said will deed, the Commissioner has rightly accepted the intervention. Needless to say that on the basis of the will deed, respondent no.2 would stand in the shoes of deceased Sangabai and as such, his case is restricted to the grounds raised by deceased Sangabai for mutating her name in respect of the suit property. As such, it is open for the petitioners herein to raise all the grounds that are canvassed in this Writ Petition in respect of the registered adoption deed and it is for the learned Commissioner to consider the same and pass an appropriate order in the pending Revision. In view of the above, the Writ Petition is dismissed. No costs.

(V. K. JADHAV, J.)

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