

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

924 WRIT PETITION NO. 11600 OF 2015

SUDHAKAR GANESH KULKARNI
VERSUS
SHALIGRAM BHIKANRAO MORE

...
Advocate for Petitioner : Shri A. S. Sawant with Shri. R. C. Misal
Advocate for Respondent : Shri. V. S. Khairnar
...

CORAM : RAVINDRA V. GHUGE, J.

DATE : 28th NOVEMBER, 2018

PER COURT

1. The petitioner is aggrieved by the order dated 20.06.2015 passed by the Trial Court, by which, application Exh.18 filed by respondent Shaligram Bhikanrao More is allowed and he is permitted to intervene in proceeding bearing M.A. No. 134 of 2014, which is purely for deciding the legal heirs of the deceased Panditrao Kulkarni.

2. I have heard strenuous submissions of the learned advocates of the respective sides.

3. I find from the impugned order that the Trial Court has allowed application Exh.18 only on the basis of the following observations:

“ The third party has specifically pleaded that the applicant is not legal heir of deceased Panditrao Kulkarni. In my opinion, third party has to give an opportunity to disprove the applicant's case that he is not the legal heir of Panditrao Kulkarni. Therefore, third party needs to be permitted to implead participate in the matter”.

(reproduced verbatim)

4. The learned advocate for the respondent intervener concedes that he is not in any way related to the deceased Pandurang Kulkarni and he has not moved application Exh.18 to seek a declaration that he is a legal heir of the deceased Panditrao Kulkarni. He has filed application Exh.18 under Order-I Rule-8 of the C.P.C. because he has a share in the property. Therefore, he needs to be heard in a matter, wherein the Trial Court is deciding the identity of the legal heirs of the deceased Panditrao Kulkarni.

5. I, therefore, do not find that the impugned order, for the reason that it has been passed, could be sustained. The same is, therefore, required to be set aside. Application Exh.18 can be remitted for a fresh hearing by restricting the same only to the aspect as to

whether the intervener could be permitted to intervene in the proceedings, without being the legal heir of the deceased Panditrao Kulkarni.

6. In view of the above, this petition is allowed. The impugned order dated 20.06.2015 is quashed and set aside. Application Exh.18 is remitted to the Trial Court in M. A. No. 134 of 2014 for a hearing afresh.

7. It is made clear that the Trial Court would consider application Exh.18 only to the extent of whether the respondent intervener could be permitted to intervene in the said proceedings, without being the legal heir of the deceased Panditrao Kulkarni.

(RAVINDRA V. GHUGE, J.)

vsm/-