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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3879 OF 2018
WITH
WRIT PETITION NO.3880 OF 2018
WITH
WRIT PETITION NO.3895 OF 2018

Vitthal N.Shinde, since deceased
through His L.R. Shantabai V.Shinde ...Petitioner
V/s.
Shantaram M. Shinde & Ors. ...Respondents

Mr.Gaurav Potnis I/b Ms.Pallavi Potnis for the Petitioner.

Mr.A.K. Supekar I/b Supekar Anand Kumar for the Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 15TH OCTOBER, 2018.

P.C. :-

1. By consent of parties present, all these three writ petitions were heard together and are being disposed of by this common order.

2. By these petitions filed under under Article 227 of the Constitution of India, the petitioner has impugned the order dated 8th January, 2013 passed by the learned Trial Judge allowing the application filed by a third party below Exhibits – 9 and 10 respectively and directing that the application moved by the said third party be entertained within the ambit of Order XXII Rule 5 of the

Code of Civil Procedure, 1908 and granting the liberty to the decree holder to contest such objections.

3. It is the case of the petitioner that she was married to Vitthal Narayan Shinde, whose land was acquired by the Government. He was awarded certain amount by the Land Acquisition Officer. During his life time, late Vitthal Narayan Shinde filed an application under section 18 of the Land Acquisition Act, 1894 for enhancement of compensation. During the pendency of the said proceedings, the said Vitthal Narayan Shinde expired. The petitioner was impleaded as a party to the said proceedings. The petitioner pursued the said proceedings and the order was passed in favour of the petitioner in the said application filed under section 18 of the Land Acquisition Act, 1894.

4. The petitioner thereafter filed three execution proceedings before the Executing Court. At that stage, the respondent (third party) claiming to be a Class – II legal heir of late Vitthal Narayan Shinde applied for impleadment under Order I Rule 10 read with 47 of the Code of Civil Procedure, 1908 thereby disputing the heirship of the petitioner on the ground that she was not married with the said late Vitthal Narayan Shinde. It was the case of the respondent that the said late Vitthal Narayan Shinde died without leaving the heirs under Class – I and thus the respondent being the nephew of the late

Vitthal Narayan Shinde was entitled to be awarded compensation under the said land acquisition proceedings.

5. The application filed by the respondent no.1 was opposed by the petitioner on various grounds. Learned Executing Court however, passed an order that an issue as to whether the petitioner as well as the respondent no.1 were legal heirs of late Vitthal Narayan Shinde or not will have to be adjudicated upon under Order XXII Rule 5 of the Code of Civil Procedure. This order of the learned District Judge has been impugned by the petitioner in all these three writ petitions.

6. Learned counsel for the petitioner submits that upon demise of the Vitthal Narayan Shinde, the petitioner being his widow, her name was impleaded as a party to the said application filed by the deceased under section 18 of the Land Acquisition Act and the final order came to be passed in her favour. At no stage, the respondent no.1 or any other person claimed to be legal heir of the late Vitthal Narayan Shinde except the petitioner. The State Government has already deposited the compensation amount before the Executing Court and now the petitioner has to withdraw the said amount. The respondent no.1 has filed the application claiming to be a legal heir of the said late Vitthal Narayan Shinde after more than 15 years of the demise of the said Vitthal Narayan Shinde.

7. Leaned counsel appearing for the petitioner also invited my attention to Order XXII Rule 5 and also the application made by the respondent no.1 and would submit that the said application was not under Order XXII Rule 5 of the Code of Civil Procedure. He submits that in any event even the said provision could not have been applied to the land acquisition proceedings, provisions of the Limitation Act were applicable and thus the said application filed after more than 15 years of the demise of the said Vitthal Narayan Shinde was required to be dismissed by the learned Executing Court on that ground itself. Learned counsel placed reliance on the judgment of this Court delivered on 27th February, 2018 in Writ Petition No.2268 of 2018 in case of Mrs.Premmata Chandrakant Sancheti vs. Manikchand Jalamchand Tatiya & Ors. and would submit that a third party who was not a party to the land acquisition proceedings as well as in the application under section 18 of the Land Acquisition Act cannot be allowed to be impleaded as a party under Order I Rule 10 of the Code of Civil Procedure.

8. Learned counsel for the respondent on the other hand would submit that though the application made by his client was not under Order XXII Rule 5 read with 47 thereof, in view of there being a dispute about the heirship of the said late Vitthal Narayan Shinde, the said issue can be decided under section 47 of the Code of Civil

Procedure or in any event under Order XXII Rule 5 of the Code of Civil Procedure. He submits that the said order was passed by the Executing Court on 8th January, 2013, whereas the writ petitions are filed in the year 2018. He placed reliance on the following judgments :

i). The judgment of this Court delivered on 3rd July, 2009 in Writ Petition No.887 of 2008 in case of **Suman w/o Bhausaheb Bhingardive vs. Chandrabhagabai w/o Banshi Bhingardive & Ors.**, and

ii). The judgment of this Court in case of **Raghunath Dhondu Navde vs. Pandit Ramchandra Navde & Ors. 2000(1) Bom CR 129.**

9. Learned counsel for the petitioner in rejoinder distinguished the judgments relied by the learned counsel for the respondent and would submit that the judgment of this Court in case of **Mrs.Premalata Chandrakant Sancheti** (supra) would squarely apply to the facts of this case.

10. It is not in dispute that after the demise of Vitthal Narayan Shinde, the petitioner was impleaded as legal heir of the said deceased and she pursued the said proceedings. The Reference Court has allowed the said application filed under section 18 of the Land Acquisition Act partly and has passed a decree in her favour.

For last 15 years, the respondent no.1 did not bother to intervene in the proceedings claiming to be the legal heir of Vitthal Narayan Shinde. The State Government has now deposited the amount of enhanced compensation before the Executing Court. At this stage, in my view, learned Executing Court could not have entertained the application filed by the respondent no.1 under Order I Rule 10 of the Code of Civil Procedure read with 47 of the Code of Civil Procedure.

11. It is not in dispute that the respondent no.1 though claim to be Class - II heir of the said late Vitthal Narayan Shinde, did not apply for impladment in the land acquisition proceedings or before the Reference Court at any point of time. In these circumstances, in my view, the remedy, if any, of the respondent no.1 would be to file a separate suit for claiming rights in the compensation amount after proving his status as legal heir of the late Vitthal Narayan Shinde.

12. The judgments relied upon by the learned counsel for the respondent no.1 are clearly distinguishable in the facts and circumstances of this case and would not support the case of the respondent no.1.

13. In my view, the impugned order passed by the Executing Court on 8th January, 2013 is thus contrary to law and more particularly the principles laid down by this Court in case of **Mrs.Premalata Chandrakant Sancheti** (supra). The judgment of this

in case of **Mrs.Premalata Chandrakant Sancheti** (supra) squarely applies to the facts of this Court. I am respectfully bound by the said judgment.

14. I therefore, pass the following order :-

a). The impugned order dated 8th January, 2013 passed by the learned Trial Judge entertaining the application filed by the respondent no.1 below Exhibits – 9 and 10 is quashed and set aside.

b). The Writ Petition Nos.3879 of 2018, 3880 of 2018 and 3895 of 2018 are allowed in aforesaid terms. There shall be no order as to costs.

Vasant Anandrao
Idhol

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Anandrao Idhol
Date: 2018.10.19 10:57:04 +0530

(R.D. DHANUKA, J.)