

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7860 OF 2008

Popat Shankar Bhoje & Ors.	...	Petitioners
V/s.		
Mansing Shankar Bhoje & Ors.	...	Respondents

- Mr.Jaydeep S. Deo for the Petitioners.
- Mr.Vijay Killedar for Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 29th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the parties.

2] By this Writ Petition, the Petitioners are challenging the order dated 1st September 2008 passed by the Joint Civil Judge Junior Division, Kurundwad, below Exhibit-17 in Regular Civil Suit No.124 of 2002. The application at Exhibit-17 was moved by the Petitioners under Order-1 Rule-10 of Code of Civil Procedure for impleading them as parties to the suit.

3] It is the case of the Petitioners that the suit properties were originally owned by late Parshuram Bhoje. He has three sons, by name, Shankar, Bhau and Kallappa. It is undisputed that, no partition

of ancestral properties had taken place between these three sons of late Parshuram. Kallappa died on 13.7.1969 and his wife Chandrabai died on 1.12.1989. She is survived by their daughter Sushilabai. Late Shankar had two wives, first one was Gourabai and second one Sakhubai. Gourabai died on 29.9.1968, whereas Sakhubai died on 5.10.1983. Shankar died on 23.3.1989. The Respondent/Plaintiff and Org. Defendant Nos.1 to 4 are the children of late Gourabai, the first wife; whereas the Petitioners and late Ashok are the children of Sakhubai.

4] The Respondent/Plaintiff has filed the instant suit before the trial Court claiming ownership over 1/3 share of the suit properties on the basis of the will dated 5.9.1969 executed by late Kallappa in his favour. The said will was under challenge in Regular Civil Suit No.5 of 1976 filed by Sushila, the daughter of Kallappa. However, the said suit came to be dismissed on merit and the said judgment and order was confirmed in Regular Civil Appeal No.169 of 1984. Thereafter, there was no challenge to the said will. Admittedly, Petitioner No.1 and the father of Petitioner Nos.7 to 11 were parties to the said suit.

5] Meanwhile, the Petitioners herein had also filed suit

bearing Regular Civil Suit No.183 of 2001 claiming to be the legal heirs of deceased Shankar. The said suit came to be dismissed on 30.9.2010. Thereafter, the Petitioners herein had preferred an appeal against the same along with application for delay condonation which is pending.

6] In this backdrop, the Petitioners who are the children of deceased Shankar from his second wife Sakhubai had filed this application for impleadment in the suit which was filed by the Respondent claiming 1/3 share in the property left behind by Kallappa and it was on the basis of the will executed by Kallappa.

7] The trial Court was, while deciding this application, pleased to hold that as the Petitioners are the children of late Shankar, out of the second marriage which was a void marriage, are not entitled to claim any heirship or succession over the properties of late Kallappa. Moreover, as the Petitioner No.1 and father of Petitioner Nos.7 to 11 were parties to the suit filed by daughter of late Kallappa and the said suit was also dismissed in appeal, issue as to ownership of 1/3 share of Kallappa has been determined conclusively, therefore, Petitioners are not entitled to have any interest in 1/3 share of late Kallappa. They are also not entitled to claim any heirship or succession in the properties of Kallappa as per the Hindu Succession Act.

8] While challenging this order of the trial Court, as rightly submitted by learned counsel for the Petitioners, though the suit bearing Regular Civil Suit No.183 of 2001 came to be dismissed, in the said suit, the finding was clearly arrived at that the Petitioners are the legal heirs of deceased Shankar. Only because they had not claimed any ownership over the suit properties or any consequential/further relief in respect of the suit properties, the relief of declaration simpliciter that they are legal heirs of deceased Shankar, was not granted and hence, the suit is dismissed. Admittedly, the appeal against the said judgment and decree along with delay condonation application is pending in the Appellate Court.

9] Be that as it may, the fact remains that the Petitioners are held to be the legal heirs of deceased Shankar. In view thereof, the finding arrived at by the trial Court that, as the Petitioners are born from the second wife of late Shankar and hence, out of void marriage, therefore they are not entitled to claim any heirship over the properties of late Kallappa, cannot be sustained on the basis of record.

10] Moreover, it may be true that, the will executed by Kallappa, bequeathing the properties in favour of the Plaintiffs in this suit is held to be legal and valid, but then admittedly Kallappa's 1/3

share in the said property was not decided or partitioned. Conversely, as on today also, the ancestral properties, are joint family properties and partition is yet not effected. Therefore, it follows that the Petitioners are having some *locus standi* to get themselves impleaded in this suit, because the decision of the suit is going to affect the rights and liabilities of the joint family properties owned by the Petitioners and the Respondents. Ultimately, the Petitioners may not succeed in view of the will executed by Kallappa in favour of the Respondent/Plaintiff but for the purpose of deciding the rights of the parties effectively, finally and completely, the presence of the Petitioners may be necessary, to assist the Court in arriving at its just and proper conclusion.

11] In view thereof, Writ Petition is allowed. The impugned order passed by the trial Court, rejecting the Petitioners' application for impleadment is set-aside. The application filed by the Petitioners at Exhibit-17 is allowed. The Respondent/Plaintiff to carryout necessary amendment within 15 days from the receipt of this order to implead the Petitioners in the suit, as Defendants. The Petitioners, thereafter to file written statement within three weeks, after the amendment is carried out. The trial Court, thereafter, to decide the suit as expeditiously as possible and preferably within a period of one year.

12] It is clarified that, whatever observations made here-in-above, are only for the purpose of deciding this Writ Petition and the trial Court is not be influenced by the same.

[DR.SHALINI PHANSALKAR-JOSHI, J.]