

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13710 OF 2017

Haresh Chetan Thadani,]
Aged about 54 years, Indian Inhabitant,]
R/at Flat No.5 and 6, Meenakshi Apartments,]
32nd Road, Bandra (West), Mumbai – 400050.]
And]
Partner of M/s. Evergreen Trades and]
Agencies, Plot No.36-A, Mahal Industrial]
Estate, Mahakali Caves Road,] Petitioner /
Andheri (East), Mumbai – 400093.] [*Org. Defendant No.1*]

Versus

1. Chetan Bulchand Thadhani (Since Deceased),]
Aged about 71 years,]
R/at Flat No.5 & 6, Meenakshi Apartments,]
32nd Road, Bandra (West), Mumbai-400050.]
2. Sunil Chetan Thadhani,]
Aged about 50 years, Indian Inhabitant,]
R/at Flat Nos.5 and 6,]
Meenakshi Apartments, 32nd Road,]
Bandra (West), Bombay – 400050.]
And]
Partner of M/s. Evergreen Trades and]
Agencies at Plot No.36-A, Mahal Industrial]
Estate, Mahakali Caves Road, Andheri (E),]
Mumbai – 400093.]
3. Komal Suresh Chainani (Since Deceased),]
Aged about 43 years,]
R/at 30, Jal Kiran Apartments, 8th Floor,]
Opp. President Hotel, Cuffe Parade,]

- Mumbai – 400005.]
4. Natasha Prakash Tilokani,]
 Aged 31 years,]
 R/at Flat No.5, Jal Kiran, 2nd Floor,]
 Cuffe Parade, Mumbai – 400050.]
 Being the heir and legal representative of]
 Komal Suresh Chainani]
5. Suresh Premchand Chainani,] Respondents /
 Aged about 64 years, Indian Inhabitant,] [*Res.Nos.1 & 2 are*
 Presently residing at Flat No.28,] *Org. Plaintiffs /*
 Strand House, 3rd Floor, Colaba,] *Res. Nos.3 & 4 are*
 Mumbai – 400 050.] *Org. Def. Nos.2 & 2a /*
6. The Court Receiver, High Court, Bombay.] *Res. No.5 is Applicant*

ALONG WITH

WRIT PETITION NO.296 OF 2018

- Sunil Chetan Thadhani,]
 Aged about 50 years, Indian Inhabitant,]
 R/at Flat Nos.5 and 6,]
 Meenakshi Apartments, 32nd Road,]
 Bandra (West), Bombay – 400050.]
- And]
- Partner of M/s. Evergreen Trades and]
 Agencies at Plot No.36-A, Mahal Industrial]
 Estate, Mahakali Caves Road, Andheri (E),] ... Petitioner /
 Mumbai – 400093.] [*Org. Plaintiff No.2*]

Versus

1. Chetan Bulchand Thadhani (Since Deceased),]
 Aged about 71 years,]
 R/at Flat No.5 & 6, Meenakshi Apartments,]
 32nd Road, Bandra (West), Mumbai-400050.]

2. Haresh Chetan Thadani,]
 Aged about 54 years, Indian Inhabitant,]
 R/at Flat No.5 and 6, Meenakshi Apartments,]
 32nd Road, Bandra (West), Mumbai - 400050.]
 And]
 Partner of M/s. Evergreen Trades and]
 Agencies at Plot No.36-A, Mahal Industrial]
 Estate, Mahakali Caves Road, Andheri (E),]
 Mumbai - 400093.]
3. Komal Suresh Chainani (Since Deceased),]
 Aged about 43 years,]
 R/at 30, Jal Kiran Apartments, 8th Floor,]
 Opp. President Hotel, Cuffe Parade,]
 Mumbai - 400005.]
4. Natasha Prakash Tilokani,]
 Aged 31 years,]
 R/at Flat No.5, Jal Kiran, 2nd Floor,]
 Cuffe Parade, Mumbai - 400050.]
 Being the heir and legal representative of]
 Komal Suresh Chainani]
5. Suresh Premchand Chainani,] Respondents /
 Aged about 64 years, Indian Inhabitant,] [Res.Nos.1 & 2 are
 Presently residing at Flat No.28,] Org. Plaintiffs /
 Strand House, 3rd Floor, Colaba,] Res. Nos.3 & 4 are
 Mumbai - 400 050.] Org. Def. Nos.2 & 2a /
6. The Court Receiver, High Court, Bombay.] Res. No.5 is Applicant

Mr. Pankaj Kowli, with Mr. Sandeep Sharma, i/by M/s. Ranjit & Co., for the Petitioners in both the Petitions.

Ms. Rajkumari C. Nichani for Respondents No.5.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 16TH JANUARY 2018.

PRONOUNCED ON : 24TH JANUARY 2018.

JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of learned counsel for both the Petitioners and learned counsel for Respondent No.5.

2. As both these Writ Petitions raise the common question of law and are between the same parties and arising out of the same order, they are being decided by this common Judgment.

3. The father of the present Petitioners, namely, Chetan Bulchand Thadhani, his sons Sunil and Haresh, who are the Petitioners herein, were the Partners of the Firm known as M/s. Evergreen Trades and Agencies. Flat Nos.5 and 6, Meenakshi Apartment, 32nd Road, Bandra (West), Mumbai-400050 and the factory premises, namely, the front half portion of the Building on Plot No.I36-A, Mahal Industrial Estate, Mahakali Caves Road, Andheri (East), Mumbai, are the estates of the said Firm. Late Shri Chetan Thadhani, the father of the present Petitioners, and Respondent No.2 and his son, Sunil, the Petitioner in Writ Petition No.296 of 2018, had filed a Suit, bearing No.3349 of 1989, for dissolution of the said Partnership Firm and various other reliefs against Haresh, Petitioner in Writ Petition No.13710 of 2017 filed in this

Court. In the said Suit, the Court Receiver was appointed by this Court. The Petitioners herein, who are the sons of deceased Chetan Thadhani, were appointed as the 'Agents' of the Court Receiver in respect of the assets of the Partnership Firm. Due to enhancement of the pecuniary jurisdiction of the City Civil Court, Bombay, the Suit was transferred to the said Court and it was assigned new number, being Suit No.9812 of 1989. The appointment of Court Receiver, however, continued in the said Suit, as per the order passed by this Court.

4. During pendency of the said Suit, Original Plaintiff No.1-Chetan Thadhani expired and his legal heirs were brought on record and since Original Plaintiff No.2-Sunil and Original Defendant No.1-Haresh were the legal heirs of deceased Chetan Thadhani, their names were substituted as legal heirs of Plaintiff No.1-Chetan. The name of the daughter of Plaintiff No.1-Chetan, namely, Respondent No.3-Komal Suresh Chainani, was also brought on record as Original Defendant No.2. She claimed the property of her father's share in the said Firm, claiming some rights in Flat Nos.5 and 6, which were the part of the assets of the Partnership Firm.

5. During pendency of the Suit, Respondent No.3-Komal Suresh Chainani also expired on 6th November 2012, leaving behind her daughter Respondent No.4-Natasha Prakash Tilokani and her husband Respondent No.5-Suresh Chainani. As per the order passed in Chamber

Summons No.1875 of 2014 and another Chamber Summons No.1839 of 2014, the name of her daughter 'Natasha' alone was brought on record as her legal heir and the Chamber Summons for bringing the name of her husband on record came to be rejected. This order was challenged by her husband, namely, Respondent No.5-Suresh in Civil Revision Application No.213 of 2015 filed in this Court. In the said Revision Application, as it was contended that, deceased Komal Chainani had also executed a 'Will', bequeathing her share in the assets of the Partnership Firm in the name of her husband and her daughter, the said Revision Application came to be disposed of, directing Respondent No.5-Suresh Chainani, her husband, to take out a fresh Chamber Summons, enclosing therewith a copy of the 'Will' and the proceedings instituted in this Court on the basis of that 'Will'.

6. In view thereof, the fresh Chamber Summons No.1078 of 2015 was filed before the Trial Court by Respondent No.5-Suresh for impleading him also as legal heir of Respondent No.3-Komal. This Chamber Summons was strongly resisted by the Petitioners herein contending, *inter alia*, that, as the suit property was inherited by deceased Komal from her father in the presence of her daughter, her husband cannot inherit any rights therein.

7. The Trial Court, however, allowed the said Chamber Summons holding that, in view of the 'Will' executed by deceased Komal,

bequeathing the property in favour of her husband and daughter, and that 'Will' being pending for adjudication in Testamentary Suit No.26 of 2014, it would definitely help the Court to proceed with the Suit, if he is joined as a party-Defendant in the Suit, so as to enable the Court to dispose of the matter on merits, by giving proper opportunity to all the parties concerned to put-forth their case. The Trial Court further held that, under the provisions of Order 1 Rule 10 of C.P.C. also, in order to effectually and completely adjudicate upon and settle all the questions involved in the Suit, the person, who has some right or interest in the suit property or the person, who the Court thinks to be just and necessary party to the Suit, can be joined, even without application, at any stage of the proceeding. The Trial Court, therefore, allowed Respondent No.5-Suresh, the husband of deceased Komal, to be joined in the Suit as party-Defendant.

8. This order of the Trial Court is challenged in both these Writ Petitions by the Petitioners, who are sons of the Original Plaintiff No.1, namely, Sunil Thadhani and Haresh Thadani.

9. The submission of learned counsel for the Petitioners is that, under Section 15(2)(a) of the Hindu Succession Act, 1956, (*for short, "the Succession Act"*), the husband cannot claim any right in the property inherited by a 'female Hindu' from her father or mother, as it can devolve only upon her children or children of her predeceased son and

daughter and only in their absence, it will devolve upon the husband or his legal heirs. Here in the case, it is submitted that, the assets of the Partnership Firm, which is the suit property, were inherited by deceased Komal from her father and, therefore, under Section 15(2)(a) of the Succession Act, her daughter alone can claim right therein. Her husband cannot have any right in the said property. Hence, he is not a necessary party to the Suit.

10. To substantiate this submission, learned counsel for the Petitioners has placed reliance on the Judgments of the Apex Court in the case of *Radhika Vs. Aghnu Ram Mahto*, (1994) 5 SCC 761 and in the case of *Durga Prasad Vs. Narayan Ramchandaani (D)*, thr. LRs., 2017 (5) ALL MR 468 (S.C.), wherein, the provisions of Section 15(2)(a) of the Succession Act are discussed and claim of the husband to succeed to the property, left behind by his wife and which is inherited by her from parental side, in the presence of her children, was rejected.

11. The reliance is also placed on the order passed by this Court in Chamber Summons No.40 of 2013 in Suit No.93 of 2000, between the same parties, on 29th July 2013. The said Chamber Summons was also filed by the present Respondent No.5, claiming share in the suit property of deceased Komal and, on that count, for his impleadment. However, this Court has rejected his claim on the ground that, he cannot claim any right in the property left behind by his wife, which property she has

inherited from her parents. Even his claim on the ground that his wife had left behind a 'Will', bequeathing her estate to him and her daughter, and Petition No.1232 of 1999 was also filed for 'Letter of Administration' and, therefore, he is entitled to be impleaded in the Suit, came to be rejected on the count that, the said 'Will' is yet not propounded. Accordingly, it was held that, amendment to the Petition in the said Suit would be restricted only to implead Natasha, the daughter of deceased Komal.

12. Learned counsel for the Petitioners has then relied upon the order passed by the Trial Court on 17th September 2016 in Chamber Summons Nos.474 of 2015 and 552 of 2015 in Suit No.1904 of 1989, again between the same parties, wherein, Natasha, the daughter of deceased Komal, was alone allowed to be impleaded in the Suit as her legal heir and not her husband – the present Respondent No.5-Suresh Chainani.

13. As against it, learned counsel for Respondent No.5 has placed reliance on the order passed by this Court in Civil Application No.118 of 2013 in Writ Petition No.687 of 2011, wherein, both, the husband and daughter of deceased Komal, were allowed to be brought on record, subject to objection of the present Petitioners, in view of Section 15(2) (a) of the Succession Act.

14. Learned counsel for Respondent No.5 has also relied upon the

order dated 23rd August 2016 passed by this Court in Writ Petition No.2850 of 2015, wherein, the order dated 3rd February 2015, allowing the Chamber Summons No.1326 of 2012, was challenged. As per the said order, both, the husband and the daughter of deceased Komal, were allowed to be joined as legal representatives by the Trial Court and that order was confirmed, keeping open the objection relating to their entitlements.

15. Learned counsel for Respondent No.5 has then also placed reliance on the order dated 16th December 2014 passed in Notice of Motion No.144 of 2014 in Testamentary Suit No.94 of 2000 in Testamentary Petition No.1233 of 1999, again between the same parties, wherein, the husband and married daughter of deceased Komal, both, were allowed to be impleaded as the legal heirs of deceased Komal, in view of the 'Will' executed by deceased Komal, bequeathing her property in their names.

16. The reliance is also placed by learned counsel for Respondent No.5 on the order dated 27th January 2015 passed by the Division Bench of this Court in Appeal No.1 of 2015, which was preferred against the order dated 16th December 2014 passed by the learned Single Judge in the above-referred Chamber Summons No.46 of 2013, and the said Appeal came to be dismissed, in view of the 'Will' executed by deceased Komal, bequeathing her property in favour of her husband and daughter.

17. Lastly, learned counsel for Respondent No.5 has relied upon the order dated 14th October 2014 passed by the City Civil Court, Bombay, in Notice of Motion No.837 of 2014 in Chambr Summons No.1469 of 2013, thereby allowing the allowing Respondent No.5 to be joined as legal heir of deceased Komal.

18. Thus, it is apparent that, both the parties are having one or more orders in their favour and this Court is again called upon to decide the same question of law, in the backdrop of, more or less, same facts. As the controversy involved in the present Writ Petitions mainly revolves around the interpretation of Section 15(2)(a) of the Succession Act, for ready reference, Section 15 of the Hindu Succession Act, 1956, can be reproduced as follows :-

“15. General rules of succession in the case of female Hindus.-

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,-

(a) firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the husband.

(b) secondly, upon the heirs of the husband.

(c) thirdly, upon the heirs of the father, and

(d) fourthly, upon the heirs of the father, and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1)-

- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father, and*
- (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”*

19. The plain reading of Section 15, thus, makes it explicitly clear that, only in the absence of a son or daughter or children of the predeceased son or daughter, the property inherited by a 'female Hindu' from her paternal side will devolve, as per Section 15(1) of the Succession Act. In all other cases, it will devolve only on her children or the children of her predeceased son or daughter. Hence, for husband to inherit her property, under Section 15(1) of the Succession Act, it is essential that, she must have died issue-less, then only, the property will devolve on him, in the order laid down in Section 15(1) of the Succession Act. Otherwise, it will devolve as per the order laid down in Section 15(2)(a) of the Succession Act. The wording of Section 15(2)(a) of the Succession Act is very clear to that effect. As the husband stands in the 'Class of Heirs', laid down in Section 15(1)(a), he can succeed to such property,

only when she has died in absence of her children or children of her predeceased son or daughter.

20. In this respect, this Court can usefully refer to the earlier decision of the Apex Court in the case of *Dandapani Chettiar Vs. Balasubramanian Chettiar (Dead) by LRs. and Others*, (2003) 6 SCC 633, wherein, in paragraph No.10, it was held as follows :-

“10. Sub-section (2) of Section 15 carves out an exception in case of a female dying intestate without leaving son, daughter or children of a predeceased son or daughter. In such a case, the rule prescribed is to find out the source from which she has inherited the property. If it is inherited from her father or mother, it would devolve as prescribed under Section 15(2)(a). If it is inherited by her from her husband or father-in-law, it would devolve upon the heirs of her husband under Section 15(2)(b). The clause enacts that in a case where the property is inherited by a female from her father or mother, it would devolve not upon the other heirs, but upon the heirs of her father. This would mean that, if there is no son or daughter, including the children of any predeceased son or daughter, then, the property would devolve upon the heirs of her father. Result would be - if the property is inherited by a female from her father or her mother, neither her husband nor his heirs would get such property, but it would revert back to the heirs of her father.”

21. This legal position is further re-affirmed by the Apex Court in the latest decision of *Durga Prasad Vs. Narayan Ramchandaani (D)*, thr.

LRs., 2017 (5) ALL MR 468 (S.C.), in paragraph No.11, as follows :-

“11. Section 15 of the Hindu Succession Act lays down the general order of succession to the property of a female intestate, who dies after the commencement of the Hindu Succession Act, and states the scheme of succession to her property, which is different from that of order of succession to the property of a male intestate. Sub-section (2) of Section 15 carves out two exceptions to the general scheme and order of succession. We are concerned with clause (b) of sub-section (2) of Section 15, as noted above, which has been grated as an exception to the provisions relating to the general order of succession to the property of a female intestate.”

22. It was further held that,

“The exception carved out in Section 15(2)(b) provides for a special order of succession in case of property inherited by her from her husband or her father-in-law; but its operation is confined to the case of her dying without leaving a son or a daughter or children of predeceased children to inherit her property. Language used in the section clearly specifies that the property inherited from the husband and father-in-law would devolve upon the heirs of husband/father-in-law from whom she inherited the property.”

23. Learned counsel for the Petitioners has, in this respect, also relied upon the Judgment of the Apex Court in the case of *Radhika Vs. Aghnu Ram Mahto*, (1994) 5 SCC 761, wherein, it was held that, reading of this provision, thus, clearly indicates that, for the property inherited by a

'female Hindu' from her father or mother; in other words, female's parental side, in the absence of her own son or daughter or children of the predeceased son or daughter, the succession opens to the heirs of the father or mother and not to the Class I heirs in the order specified in sub-section (1) of Section 15 of the Succession Act and in the order of Section 16.

24. In other words, as held in the Judgment of the Apex Court in the case of *Radhika Vs. Aghnu Ram Mahto*, (1994) 5 SCC 761,

“The children and the children of the predeceased son or daughter of the 'female Hindu' alone are entitled to get such property. Thus, husband stands excluded from the succession to the property inherited by 'female Hindu' from her father's side.”

25. Thus, the unequivocal legal position emerging from these decisions of the Highest Court of law is that, in case of a 'female Hindu', dying intestate, leaving behind her own children or the children of her predeceased son and daughter and the property is inherited by her from her paternal side, then, it will go exclusively to her children and not to her husband. Only if she has died issue-less, then, in that case, such property will devolve, as per Section 15(1) of the Succession Act, which includes, not only her children and children of her predeceased son and daughter, but also her husband. Therefore, husband will be entitled to get share in the property left behind by his wife, if she has inherited it

from her paternal side, only in the absence of her children or the children of her predeceased son and daughter.

26. In the instant case, it is not disputed that the suit property is inherited by deceased Komal from her father. It is also not disputed that Respondent No.4-Natasha is her daughter and, therefore, in the presence of her daughter, her husband stands excluded from any right in the suit property and this legal position cannot be controverted or disputed in this case. This legal position is also upheld by this Court in its order dated 29th July 2013 passed in Chamber Summons No.40 of 2013 in Suit No.93 of 2000, which was again between the same parties, and it was held that, the husband of deceased Komal stands excluded from inheritance rights of the property left behind by deceased Komal, as it was inherited by her from her parents and she has died leaving behind her daughter.

27. Hence, there may be some substance in the submission advanced by learned counsel for the Petitioners that Respondent No.5-Suresh Chainani, the husband of deceased Komal, cannot be a party to this Suit, which pertains to the property left behind by deceased Komal, which was inherited by her from her paternal side.

28. However, there is one more angle to this litigation, which is a fact, that deceased Komal has executed a 'Will' on 20th July 2012 in respect of

her property and by the said 'Will', she has bequeathed her property, both, to her husband-Suresh and to her daughter-Natasha. In respect of the said 'Will', Testamentary Suit No.26 of 2014 is pending in this Court. Hence, according to learned counsel for Respondent No.5-Suresh, on the basis of this 'Will' at-least, he is entitled to be impleaded in the Suit.

29. According to learned counsel for the Petitioners, however, as the said 'Will' is subjudice in Testamentary Suit No.26 of 2014, unless the final order in testamentary proceeding is passed, he cannot claim to be having any right in the suit property and, therefore, his impleadment is not necessary.

30. To substantiate this submission, learned counsel for the Petitioners has relied upon the Judgment of this Court in the case of *Babasaheb Yeshwant Anandrao Patil Vs. Smt. Manjulabai Balwant Gaikwad, 2001 (2) ALL MR 574*, wherein, the provisions of Section 213, read with Section 283, of Indian Succession Act, 1925, were considered and it was held that,

“In an application for probate filed by daughter of the deceased contestant, to add her as party in place of deceased on the basis of the 'Will', cannot be maintainable, as no 'Letters of Administration' are yet obtained by the daughter for the property of the deceased.”

31. It was further held that,

“Section 283(1)(c) mandates that no other person, except the person who has interest in the estate of the deceased, would be necessary party to the proceedings of application for probate and as per Section 213 of the Act, any right as an executor or legatee needs to be established, unless the Court of competent jurisdiction in India has granted probate on a 'Will', under which the right is claimed or has granted 'Letters of Administration'.”

32. Here in the case, it is urged that, as the 'Letters of Administration' are yet not issued in favour of the husband of deceased Komal, he cannot claim representation in this Suit.

33. However, the perusal of this Judgment shows that, the issue raised therein was for impleadment in the application for probate. That is not the case here. In the present case, the issue raised is the impleadment of deceased Komal's husband in a Suit, in which the rights to the properties of deceased Komal are in question. In view of the provisions of Section 213 read with Section 283 of Indian Succession Act, 1925, the presence of such legatee may not be necessary in the proceedings for probate, but here, the things may be looked at from a different perspective, in view of the fact that, earlier, the Division Bench of this Court in the proceedings between the same parties in Appeal No.1 of 2015 in Chamber Summons No.46 of 2013 in Testamentary Suit No.94 of 2000 and in Testamentary Petition No.1233 of 1999 dated 27th January 2015, after considering the

decision of this Court in the case of *Thirty Sam Shroff Vs. Shiraz Byramji Anklesaria & Anr.*, 2007 (2) Bom. C.R. 560, and also the decision of the Apex Court in the case of *Shambhu Prasad Agarwal & Ors. Vs. Bhola Ram Agarwal*, (2000) 9 SCC 714, was pleased to hold that, the order passed by the learned Single Judge, permitting impleadment of the husband of deceased Komal in the Testamentary Petition and the Suit, was legal and correct. It was held that, if he was entitled to file a Petition for issuance of 'Letters of Administration', no useful purpose will be served in asking him to file a separate Petition for 'Letters of Administration'.

34. The Trial Court has also, in its impugned order, considered this aspect by observing that, impleadment of the husband of deceased Komal as party-Defendant to the suit 'Will' definitely help the Court to proceed with the Suit in enabling the Court to dispose of the matter on merits by giving proper opportunity to all the parties concerned to put-forth their case. It was observed by the Trial Court that, the Suit is pending since the year 1989 and it would not be fruitful to keep the Suit lingering on the count that, status of Respondent No.5-Suresh as legal heir or not is under subjudice or it is yet to be decided. This view of the Trial Court cannot be faulted and appears to be correct and proper in the facts of the present case. Let the husband of deceased Komal be a party to the Suit, so that, whatever the dispute is there between the parties, it can be decided effectually, completely and finally.

35. One also cannot forget, in this respect, the provisions of Section 2(11) of CPC, which define the term 'Legal Representative' to mean, *“a person, who, in law, represents the estate of a deceased person and includes any person, who intermeddles with the estate of the deceased”*. Thus, the mandate of Section 2(11) of CPC is that, any person representing the estate of Deceased or who intermeddles with the estate is a legal representative and, therefore, on this count also, he can definitely be entitled to be impleaded, as the 'Will' stands executed in his favour.

36. One may also take recourse to the provisions of Order 1 Rule 10(2) of CPC, which makes it necessary for the Court to join the person, who has some right or interest in the property or whose presence, the Court deems necessary, to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the Suit.

37. In the instant case, the legal status of the Applicant-Suresh may be yet to be decided, as the application for 'Letters of Administration' is pending adjudication, but, as observed by the Trial Court, one does not know what would be the outcome of the same. But, if the outcome is in his favour, then, naturally, again there will be a fresh round of litigation and hence, in order to avoid the same, it is always necessary that he should be a party to this Suit.

38. As regards the submission of learned counsel for the Petitioners that, Natasha, the daughter of deceased Komal, is very much party to this Suit and she can sufficiently represent the estate of the Deceased and also the interest of Respondent No.5-Suresh, her father, the Trial Court has rightly held that, the right of her father stand on independent footing and he has to make out his claim as a legal heir and legal representative of deceased Komal and, therefore, as he has raised certain points for consideration of the Court, therefore, his impleadment in the Suit is necessary.

39. At this stage, it may also be stated that, as a matter of fact, it is not necessary to go into the issue, *'as to whether Respondent No.5-Suresh Chainani is really the legal representative or the successor to the property left behind by deceased Komal'*, because, that issue is neither finally concluded by the Trial Court, nor it can be concluded by this Court and it has to be kept open, to be decided after the parties lead evidence or after some decision is given in the 'Letters of Administration'.

40. Therefore, whatever order is passed by the Trial Court, permitting Respondent No.5-Suresh to be impleaded along with his daughter, is required to be treated as a 'procedural order', based only on a prima facie view, and all contentions of the parties as regards their impleadment to be joined as a legal representatives of deceased Komal or to inherit the

share in the property left by her 'Will', have to be considered on its own merits at the time of trial. This being a position, no prejudice is also going to be caused to the Petitioners, as the contentions of the Petitioners regarding entitlement of Suresh Chainani are not foreclosed.

41. Thus, with the clarification that all the contentions of the parties on this issue are expressly kept open, both the Writ Petitions need to be disposed of. Accordingly, both the Writ Petitions stand dismissed.

42. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.]