

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

908 WRIT PETITION NO.1911 OF 2019

BABURAO LAXMAN THOMBRE AND ANOTHER
VERSUS
BHAGWAN NARAYAN DESHMUKH AND OTHER

...

Advocate for Petitioners : Mr. Bangar Nilkanth P.
Advocate for Respondent Nos. 1 to 4 : Mr. V.R. Langhe

...

**CORAM : P.R. BORA, J.
DATED : 19th March, 2019.**

PER COURT:-

. Advocate Shri Bangar, seeks leave to delete the names of respondent nos. 5, 6 and 10.

2. Leave granted. The names of the aforesaid respondents be deleted from the array of respondents at the risk of the petitioners.

3. The petitioners have challenged the order passed by the Civil Judge, Senior Division, Vaijapur below application at Exhibit-64 in Special Darkhast No. 4 of 2016. The aforesaid application was filed by petitioner no.2 for her impleadment in the darkhast proceedings by invoking the provisions under Order I Rule 10 of the Civil Procedure Code, 1908. It was her contention that she is the daughter of deceased Housabai i.e. judgment debtor and as such was

liable to be impleaded as the respondent in the special darkhast proceedings. The application was opposed by the decree holders. The learned Executing Court after having considered the submissions advanced by the parties to the lis, rejected the said application vide the impugned order.

4. Shri Bangar, the learned counsel appearing for the petitioners submitted that the Trial Court has wrongly rejected the application filed by petitioner no.2. The learned counsel submitted that the petitioner has filed in the present petition the heir-ship certificate issued by Sarpanch of Grampanchayat Bhaygaon, Taluka Vaijapur, District Aurangabad evidencing that petitioner no.2 is the daughter of deceased Housabai. The learned counsel submitted that an opportunity needs to be given to petitioner no.2 to place on record the said document and other necessary documents to substantiate that she is the legal heir of deceased Housabai. The learned counsel in the circumstances, prayed for setting aside the impugned order and to allow the application filed by her at Exhibit-64.

5. Shri V.R. Langhe, the learned counsel appearing for respondent nos. 1 to 4 who are the decree holders opposed the submissions made on behalf of the petitioners.

The learned counsel supported the impugned order. The learned counsel submitted that the decree of specific performance was passed in the year 1995. The learned counsel further submitted that in the decree passed in the Special Civil Suit No.552 of 1994, a condition was imposed that before executing the sale deed, the defendants would secure permission from the competent authority to sale the suit land. It was further clarified that in the event, the defendants fail to apply for permission, it would be open for the plaintiffs to apply for such permission before the competent authority. The learned counsel submitted that since the defendants i.e. judgment debtors did not apply for such permission, ultimately the decree holders-plaintiffs preferred an application before the competent authority in the year 1996. The learned counsel further submitted that since the competent authority was not taking any decision on the application submitted by the decree holders, the decree holders were constrained to file Writ Petition No. 8684 of 2015 and only thereafter, the necessary permission came to be granted. The learned counsel further submitted that to the knowledge of the decree holders, Sumanbai Babasaheb Thombre and Sushilabai Shivaji Shinde are the only two legal heirs of deceased Housabai and their names

are taken on record. The learned counsel submitted that petitioner no.2 could not produce on record any document in order to support her claim that she is the legal heir of deceased Housabai. The learned counsel submitted that the Trial Court has therefore rightly rejected her application. The learned counsel submitted that with the only intention to harass the decree holders, the petitioners had filed the frivolous application before the Trial Court and with the same motive present writ petition has been filed. The learned counsel, therefore, prayed for rejecting the petition.

6. I have given due consideration to the submissions made by the learned counsel for the parties. I have also perused the impugned order and other material placed on record by the parties. On perusal of the impugned order, it does not appear to me that the Trial Court has committed any error in rejecting the application filed by the petitioners. The Trial Court has observed that petitioner no.2 did not file on record any document in order to establish that she is the legal heir of deceased Housabai. It is further observed by the Trial Court that other legal heirs of deceased Housabai are prosecuting the proceedings since April 2017, however, they never disclosed that present petitioner no.2 namely Pushpabai Narayan Jadhav is also the legal heir of deceased

Housabai.

7. It is also observed by the Trial Court that various other applications were moved by the judgment debtors on various counts, however, in none of the applications it was even whispered that Pushpabai was also one of the legal heir of deceased Housabai and that she was not taken on record. Moreover, the decree holders have placed on record other documents evidencing that after the death of Housabai on 23.09.2016, her daughter Sushilabai and her daughter-in-law Sumanbai got mutated their names to the land gut nos. 16 and 26 vide Mutation Entry No.2221. The copy of the said mutation entry is placed on record. The said mutation entry reveals that the names of Sushilabai and Sumanbai are taken on record as the legal heirs of deceased Housabai. As was pointed out by the learned counsel for the decree holders, in the mutation entry it has been specifically mentioned that the said mutation entry was carried out on an application submitted by the applicants namely Sushilabai and Sumanbai on affidavit that they were the only legal heirs of deceased Housabai. Considering the facts as aforesaid, it does not appear to me that any error can be said to have committed by the Trial Court in rejecting the application filed by the present

petitioners.

8. It is not disputed by the petitioners that they did not file on record any documents before the Trial Court in order to establish their claim that petitioner no.2 Pushpabai is the daughter of deceased Housabai. It was sought to be contended by the learned counsel appearing for the petitioners that the decree holders are not entitled to get executed the decree since, they have filed the execution proceedings after expiry of the period of 12 years after passing of the decree in Special Civil Suit No.552 of 1994. The learned counsel submitted that because of rejection of her application, present petitioner no.2 has been deprived of her right to take objection of the execution of the impugned decree.

9. I, however, do not find any substance in the submission so made by the learned counsel in view of the fact that other judgment debtors had raised such an objection as about the limitation and the same has been turned down by the Executing Court. The said order is also placed on record. From the material on record it is quite evident that before executing the sale deed, the permission of the competent authority was required and the same came

to be granted in the recent past. It has to be stated that the decree of specific performance was passed way back in the year 1995. The original judgment debtor in her lifetime did not challenge the said decree though she was alive till 2016.. The execution proceedings are at the verge of completion.

10. The said document which is filed by the petitioner is the heir-ship certificate issued by Sarpanch of Grampanchayat Bhaygaon dated 06.02.2019. On the basis of the said certificate, it is the contention of the petitioner that she is the legal heir of deceased Housabai. Such certificate cannot be accepted as even the prima facie proof that the petitioner is the legal heir of deceased Housabai. From the contents of the certificate, it is quite evident that the said has been issued by the Sarpanch of village Bhaygaon on the basis of the application given by the present petitioner. Such certificate does not have any evidentiary value.

11. After having considered the entire material on record, it does not appear to me that any case is made out by the petitioners so as to cause interference in the impugned order. The writ petition being devoid of any

substance deserves to be dismissed and is accordingly dismissed.

12. The learned counsel for the petitioners has requested for continuing the interim order passed on 11.02.2019 for the period of next two weeks, so as to enable the present petitioners to approach the Hon'ble Apex Court. Request accepted.

(P.R. BORA, J.)

Mujaheed//