

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

WRIT PETITION NO.11663 OF 2019

SHANKAR VITHOBA PISKE THROUGH LRS RATNABAI
LIMBAJI SABNE AND OTHERS
VERSUS
SHRIMANT SHANKARAO PISKE THROUGH LRS SUBHADA
SHRIMANT PISKE AND OTHERS

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Advocate for the Petitioners : Shri N. P. Patil Jamalpurkar
Advocate for Respondent No. 2 : Shri V. V. Ingle

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 24th SEPTEMBER, 2019.

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PER COURT :

1. The petitioners, who are judgment debtors, are aggrieved by the order dated 10/04/2019 passed by the executing Court, by which, application Exhibit 153 filed by the L.Rs. of the decree holder deceased Manjulabai alias Janabai Shankar in Special Darkhast No. 42/2013, has been allowed and the L.Rs. are permitted to be brought on record.

2. The learned Advocate for the petitioners has strenuously criticized the impugned order. He relies upon the five grounds formulated in the memo of the petition. Contention is that original defendant No.1 Shankar had passed away during the

trial. Manjulabai was original defendant No.2. Regular Civil Suit No. 27/1983 was decreed on 10/12/1990. Original defendant Nos. 1, 3, 4, 5, 6, 7 and 10 filed Regular Civil Appeal No. 26/1991 in which Manjulabai alias Janabai was arrayed as respondent No.2. The decree in the suit was modified by the judgment of the Appellate Court dated 12/02/1999. Manjulabai passed away on 18/08/1999. The Second Appeal preferred by the aggrieved parties was dismissed by this Court. As such, the litigation journey that was commenced by Shrimant son of Shankar as the sole plaintiff, ended with the decision in the Second Appeal.

3. The appellants in the Second Appeal No. 519/2000 did not array the L.Rs. of deceased Manjulabai, which was dismissed on 15/09/2000.

4. In the Regular Darkhast No. 42/2013 (old Number 2004), Exhibit 153 was filed by the L.Rs. of Manjulabai stating that deceased Manjulabai is a decree holder and since her L.Rs. are not brought on record, her L.Rs. would not get the share of the property which would otherwise have come to the deceased Manjulabai if she would have been alive. By the

impugned order dated 10/04/2019, Exhibit 153 has been allowed.

5. It is, therefore, obvious that both the sides are equally to be blamed for not bringing the L.Rs. of Manjulabai on record. Shankar Vithoba, original defendant No.1 was the appellant before the first appellate Court. Though he was the husband of Manjulabai and though it is reported that he had three wives Janabai (deceased), Tirkanabai and Manjulabai alias Janabai, the L.Rs. of Manjulabai, who passed away after six months post the judgment of the First Appellate Court, were not brought on record. Her son, Shankar, original sole plaintiff, also did not bring her L.Rs. on record.

6. The issue, therefore, is as to whether the L.Rs. of deceased Manjulabai, who otherwise have a right to her share as her share also has been crystalized, should be deprived of the fruits of the decree on account of the mistakes committed by her husband Shankar Vithoba, who had preferred the First Appeal and the Second Appeal or whether a pragmatic approach should be taken so as to do complete justice.

7. The learned Advocate for the petitioners has strenuously

relied upon Order 22 Rules 2 to 4, 4A and 8 of the Code of Civil Procedure to contend that the delay caused in bringing the L.Rs. of Manjulabai on record should not be condoned and her L.Rs. be deprived of the share of the property which otherwise they were entitled to. The learned Advocate for the L.Rs. of Manjulabai submits that Rule 12 under Order 22 indicates that nothing in Rules 3, 4 and 8 under Order 22 would apply to the execution proceedings with regard to a decree or any order.

8. The learned Advocate for the petitioner has canvassed Article 120 of the Limitation Act contending that beyond 90 days, the application for bringing the L.Rs. would be barred and though Section 5 of the Act would apply, there cannot be a condonation of 20 years of delay.

9. I find that the submission of the petitioners is fallacious for the reason that the Appellant had filed the Second Appeal in the year 2000. Knowing that Manjulabai, mother of the plaintiff and wife of Shankar had passed away on 18/08/1999, he did not bring the L.Rs. of Manjulabai on record in the Second Appeal. These L.Rs. may have been unaware of the

said proceedings and only when the decree was sought to be executed by Shrimant original plaintiff, that they became aware about the share of Manjulabai. Shrimant is also one of the L.Rs. The decree was put to execution in the year 2004 and then transferred to the newly created Court at Omerga with the new registration of 2013.

10. It is in this backdrop, that I find that the impugned order of the Trial Court is aimed at doing justice rather than giving importance to technicalities. Considering the above, I do not find that the executing Court has committed any error in allowing application Exhibit 153 and permitting the L.Rs. of deceased Manjulabai to be brought on record. These L.Rs. who are otherwise entitled to the share which came to her mother, cannot be deprived of such a share.

11. This petition is therefore dismissed.

(RAVINDRA V. GHUGE, J.)

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