

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

WRIT PETITION NO. 06 OF 2018

Santosh Jadhav Patil and others .. Petitioners

Versus

Late Indubai Trambak Patil
and another .. Respondents

Shri Madhav M. Bhokarikar, Advocate for Petitioners.
Shri Ravindra M. Deshmukh, Advocate for the Respondent No. 2.

CORAM : S. V. GANGAPURWALA, J.

DATE : 04TH JANUARY, 2019.

FINAL ORDER :

. Mr. Bhokarikar, the learned advocate for petitioners submits that, the deceased defendant No. 1 is sister-in-law that is widow of the brother of petitioner Nos. 1 and 2 and uncle of the petitioner No. 3. The last rites of the husband of the deceased defendant No. 1 were performed by the petitioner No. 3. Even last rites of the defendant No. 1 were performed by the petitioner No. 3. As such according to old customary law, the petitioner No. 3 would be legal heir. The learned advocate further submits that, the defendant No. 1 received the property from her husband. In view of Sec. 15 of the Hindu Succession Act, the property will devolve upon heirs of the husband and petitioners would be the heirs of husband of deceased defendant No. 1. The

learned counsel further submits that, the property initially was joint family property. In partition the suit property went to the share of the husband of the deceased defendant No. 1. If the defendant No. 1 wants to dispose of the property, the plaintiffs have a preferential right to purchase the property. The pleadings to that effect are also placed on record. All these aspects are required to be considered. The petitioners deserve to be brought on record as legal heirs of deceased defendant No. 1. The learned counsel submits that, the Court below has not considered the pleadings of the plaintiffs with regard to preferential right to purchase the property. So also has failed to consider Sec. 15 of the Hindu Succession Act. The learned counsel submits that, upon the death of defendant No. 1, the legal heir is entitled to file an independent written statement and the petitioners if brought on record would be required to file independent written statement and put forth their stand. The learned counsel relies on the judgment of the Apex Court in a case of **Vidyawati Vs. Man Mohan and others** reported in **1995 SC 1653**.

2. The learned counsel further submits that, the deceased defendant No. 1 has not left any Class I heir. The deceased defendant No. 1 does not have any son or a daughter, as such the petitioners would be the legal heirs and would be entitled to be brought on record. The learned counsel relies on the judgment of

the Apex Court in a case of Jaladi Suguna (Dead) through L.Rs. vs. Satya Sai Central Trust and others reported in **AIR 2008 SC 2866**.

3. Mr. Deshmukh, the learned counsel for the respondent No. 2 supports the order passed by the Trial Court.

4. It is a matter of record that the deceased defendant No. 1 is a widow of the deceased brother of petitioner Nos. 1 and 2 and uncle of the petitioner No. 3. The deceased defendant No. 1 was Class I legal heir of deceased Trambak, brother of petitioner Nos. 1 and 2. The deceased defendant No. 1 during her lifetime sold the suit property in favour of defendant No. 2 under the registered instrument of sale. The petitioners by filing suit assailed the said registered instrument of sale. The deceased defendant No. 1 filed written statement before the Trial Court controverting the claim of plaintiffs and substantiated the sale deed executed in favour of the defendant No. 2. The said pleadings are read and recorded.

5. Section 15 of the Hindu Succession Act would apply only if the female hindu dying intestate has left the property. The deceased defendant No. 1 during her lifetime has executed registered sale deed of her property in favour of the defendant No. 2. She has also filed written statement in the suit thereby

accepting the execution of sale deed in favour of the defendant No. 2 and negated the claim of plaintiffs. In view of that, as the deceased defendant No. 1 had already parted with the suit property during her lifetime, Section 15 of the Hindu Succession Act would have no operation.

6. The petitioner No. 3, even if has performed last rites of deceased Trambak, still cannot claim to be the legal heir, as the deceased defendant No. 1 is Class I heir of deceased Trambak and if he has also performed last rites of deceased defendant No. 1, still cannot claim to be legal heir in view of the fact that the property was already sold by the deceased defendant No. 1 during her life time.

7. As per Sec. 2(11) of the Code of Civil Procedure legal representative means a person who in law represents the estate of a deceased person and includes any person who inter-meddles with the estate of the deceased. As per Order XXII Rule 10 of the Code of Civil Procedure, if the property devolved during the pendency of suit, the person on whom it is devolved is the representative in interest. The defendant No. 2 had become owner of the property by virtue of the registered sale deed executed by the deceased defendant No. 1. The sale deed is accepted by the deceased defendant No. 1 in her written statement also.

8. As far as the case of petitioners for preferential right to purchase the property is concerned, the same would be considered by the Trial Court at the time of final disposal of the suit.

9. In the light of the above, the Trial Court has not committed any error. The writ petition as such is dismissed. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Jan. 19