

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6750 OF 2019**

Smt Malti Krishnachandra Sharma
since deceased through the only legal heir
Dr. Neeraj Krishnachandra Sharma
through Power of Attorney Holder
Mr. Dattatraya Gopal Naik ... Petitioner.

V/s

Smt. Neena Saurabh Sharma and Anr. ..Respondents

Mr. Sujoy Mukherji i/b Yashaswita Apte for the Petitioner.
Mr. Yogesh Patil for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 11, 2019

P.C.:-

1] One Mr. Krishnachandra Sharma has three legal heirs viz. wife Malti, son Sourabh and another son Neeraj. Sourabh died intestate on 22.2.2016 leaving behind legal heirs viz. mother Malti, wife Neena and daughter Urvati.

2] Neena, widow, accordingly initiated proceedings being Misc. Application No. 917 of 2017 before Civil Judge Senior Division, Pune under Section 372 of the Indian Succession Act.

3] Before the claim could be adjudicated legally, one of the legal heirs of Sourabh i.e. his mother Malti expired. As such, son moved an application for being substituted as legal heir which is at Exhibit-42. The said application moved under Order 22 Rule 3 read with Order 1 Rule 10 of the Civil Procedure Code came to be rejected by the impugned order dated 2.4.2019. As such, this Petition.

4] While questioning the order impugned, in the capacity of legal heir of deceased mother Malti, learned Counsel for the Petitioner would urge that the order impugned is not sustainable as the Petitioner being Class-II heir has every right to succeed to the estate of mother who will be succeeding to the estate of late son Sourabh. According to him, the Court below has committed an error in rejecting prayer for being impleaded as legal heir of late Malti, his mother, contrary to the provisions of Order 22 Rule 3 of the Civil Procedure Code and provisions of Section 372 of the Hindu Succession Act. Learned Counsel would urge that whether Petitioner is entitled for share being successor in interest as legal heir of Malti can be looked into at appropriate stage of the proceedings. Drawing support from

the judgment of this Court in the matter of *Anita Anant Patil vs. Malini Anant Patil*¹, learned Counsel would urge that right being personal right, successor of Malti maintains the claim and therefore application for impleading as legal heir should have been granted.

5] Mr. Patil, learned Counsel for Respondent would support the order and sought dismissal.

6] Considered submissions.

7] Misc. Application being M.A. No.917 of 2017 is *inter se* between Class-I legal heirs under the Hindu Succession Act is not in dispute.

8] Petitioner has invoked provisions of Order 22 Rule 3 read with Order 1 Rule 10 of the Civil Procedure Code so as to claim that he being legal heir of his deceased mother Malti, is entitled to be impleaded. Section 8 of the Hindu Succession Act provides for Class-I and Class-II legal heirs who would succeed to the interest of Hindu who dies intestate. Only in the absence of Class-I legal heirs, interest would devolve upon Class-II legal heirs mentioned in the Schedule

¹ 2019(5) Mh.L.J. 407

to the Hindu Succession Act. Admittedly, Petitioner is a Class-II legal heir and that being so, order impugned rejecting the claim, in my opinion, was very much justified.

9] Petitioner, as is apparent from the factual matrix can be categorized as Class-II as prescribed under Section 8 of the Hindu Succession Act and mentioned in the Schedule to the Act. Petitioner therefore cannot be termed as necessary party to the proceedings and that being so, in my opinion, no fault could be noticed in the order impugned. As such, no interference is called for in extraordinary jurisdiction. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)