

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.11747 OF 2015**

Keraba Hanumant Lonkar  
(Since deceased through his LRs)

...Petitioners

vs.

Ramesh Gopalrao Jadhav and Ors.

...Respondents

Mr. R.A. Thorat, Sr. Advocate a/w. Mr. Prabhanjan Gujar, for the  
Petitioners

Mr. Drupad Patil, for Respondent No. 4A.

**CORAM : M. S. SONAK, J.**

**DATE : MAY 03, 2019**

**ORAL JUDGMENT:**

. Heard Mr. R.A. Thorat, learned senior advocate for the  
Petitioners and Mr. Drupad Patil, learned counsel for Respondent  
No. 4A.

2. Mr. Thorat, learned counsel for the Petitioners state that  
Respondent No. 35 who is really a contesting Respondent has been  
served and this Respondent has also filed his reply in this  
Petition.

3. The Respondent No. 35 is not present today though the  
matter is listed on board and even though by order dated 30<sup>th</sup>

November, 2015 this Court in paragraph No. 5 of the order has made it clear that this Petition will be disposed of finally at the stage of admission. Paragraph No. 5 of the order dated 30<sup>th</sup> November, 2015 reads thus:

*1. Not on Board. At the request of Mr. Gujar, taken up in production board. Heard Mr.R.A.Thorat, learned senior counsel for the petitioners.*

*2. By this Petition under Article 227 of the Constitution of India, original plaintiffs have challenged the judgment and order dated 14.8.2015 passed by the learned Jt. Civil Judge, Sr.Dn. Pune below Exh. 547 in Spl. Civil Suit no.1747 of 1995. By that order, the learned trial Judge allowed the application made by respondent no.35, herein, under Order 22, Rule 3 of C.P.C. and directed the petitioners to bring him as a plaintiff on record as a legal heir of the deceased Keraba Hanumant Lokankar. The plaintiffs are also directed to carry out necessary amendment in the cause title of the plaint by bringing him as a plaintiff on Record within limitation.*

*3. Mr. Thorat submitted that the plaintiff's father Keraba Hanumant Lonkar had instituted Special Civil Suit No.1741 of 1995 for cancellation and declaration that the sale deeds executed by defendants no.1 and 2 in favour of defendants no. 3 to 34 are illegal and not binding on the plaintiff, among other prayers. He submitted that Ms Parubai Keraba Lonkar, second wife of Keraba, instituted Special Civil Suit No.1741 of 1995 for permanent injunction and declaration of the Will dated 27.6.2005 executed by Keraba as illegal, null and void.*

*4. Pending Regular Civil Suit No.1741 of 1995, Keraba died and petitioners filed application for bringing them on record as legatee of deceased Keraba. That application was allowed. Respondent no.35 has filed application Exhibit-547 on the ground that being the son of deceased keraba, he should be brought on record as plaintiff no.2. Mr. Thorat submitted that the petitioners have no objection for bringing him on record as 'defendant' but not as a plaintiff, as the stand of the present petitioners and respondent no.35 is inconsistent. He further states that the next date of hearing in the trial Court is 2.12.2015.*

*5. In view thereof, list the petition for admission on 10.12.2015. The petitioners shall give private notice to respondent no.35, being the only contesting respondent, as also Advocate representing respondent no.35 in the trial Court by R.P.A.D/Speed Post/Courier and shall file affidavit of service along with acknowledgment before the next date of hearing. The learned Advocate representing the respondent in the trial Court is requested to accept the service. Office shall not accept affidavit of service, unless accompanied by acknowledgment.*

*5. Parties are put to notice that subject to the time constraint and convenience of the Court, Petition will be disposed of finally at the stage of admission. Notice shall further indicate that despite service, if the respondent fails to appear, the Court will proceed to decide the petition on its own merits.*

*6. Till the next date, there shall be ad-interim order in terms of prayer clause (c).*

4. The impugned order in the present case directs the impleadment of Respondent No. 35 as co-Plaintiff along with the Petitioners and further proceeds to direct the Respondent No. 35 not to take any separate stand in the suit other than stand taken by the Petitioners – original Plaintiff herein.

5. According to me, the impugned order is unsustainable. The learned trial Judge could not have foisted the Respondent No. 35 as a co-Plaintiff upon the Petitioner particularly when the Petitioners were not willing to consent to said arrangement. At the highest, the learned trial Judge could have ordered the

impleadment of Respondent No. 35 as Defendant which not even opposing by the Petitioners. It is recorded not only in the impugned order but also in paragraph No. 4 of this Court's order dated 30<sup>th</sup> November, 2015.

6. The carriage of the suit has put with the Plaintiff who have no conflict of interest *inter se*. In the present case there appears to be conflict of interest interse between the Petitioners and Respondent No. 35. In these circumstances, there was no question of impleadment of Respondent No. 35 as co-Plaintiff but the Respondent No. 35 could always have been impleaded as Defendant in the suit so that the interest, if any of Respondent No. 35 are not in any manner compromise.

7. If the Respondent No. 35 is of the opinion that he to has some independent cause of action not only against the Defendants in the suit but also against the Petitioners i.e. original Plaintiff, it is always open to Respondent No. 35 to take out separate or independent proceeding to safeguard his alleged interest. However, Respondent No. 35 cannot insist upon being a co-Plaintiff in the suit when the original Plaintiffs do not wish him to be a co-Plaintiff

on the ground that there is conflict of interests *inter se*.

8. On the aforesaid short ground, the impugned order is required to be set aside and is hereby set aside.

9. However, direction are issued for impleadment of Respondent No. 35 as Defendant in the suit. This *inter alia* on the basis of consent recorded by the Petitioners for adoption of such course of action. Even independent of such consent, the Respondent No. 35 had clearly made out case for impleadment as Defendant in the suit.

10. The Petitioners to therefore carry out necessary amendment to the suit and implead Respondent No. 35 as Defendant to the suit within a period of six weeks from today.

11. Rule is made absolute in the aforesaid terms.

12. The interim order granted on 30<sup>th</sup> November, 2015 is vacated.

13. There shall be no order as to costs.

14. All concerned to act on the basis of authenticated copy of this order.

**(M. S. SONAK, J.)**