

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**Civil Application (CAA) No.28 of 2020**

**IN**

**Appeal Against Order No.19 of 2020**

Sunita Wd/o Rajesh Tambe and Others

**Vs.**

Dilip S/o Namdeorao Tupkar and Others

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Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.  
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Court's or Judge's Orders

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Shri D.T. Shinde, Advocate for the Appellants.  
Shri M.R. Joharapurkar, Advocate for Respondent No.1.  
Shri S.A. Dutonde, Advocate for the Intervenors and Respondent Nos.3 to 6.  
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**CORAM : S.M. MODAK, J.**

**DATE : 22<sup>nd</sup> SEPTEMBER, 2020.**

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

Heard Shri S.A. Dutonde, learned Advocate for the proposed intervenors, Shri D.T. Shinde, learned Advocate for the appellants/defendant Nos.1 to 9 (except Sr. No. 8) and Shri M.R. Joharapurkar, learned Advocate for respondent No.1/original plaintiff.

One Shakuntalabai Krushnarao Kumbhalkar was defendant No.9 before the trial Court. She contested the suit along with other defendants. Even, she filed written statement along with the other defendants. The trial Court decided the temporary injunction application on 21<sup>st</sup> December, 2019.

These appellants are aggrieved by the said order and hence, they have preferred an appeal on 26<sup>th</sup> June, 2020. However, prior to preferring an appeal, the said Shakuntalabai/defendant No.9

expired on 25<sup>th</sup> February, 2020. Accordingly, she was shown as appellant No.8 with description about date of her death.

These intervenors' claim to be her legal representatives/beneficiaries of the Will. They want to participate in this appeal. The Will referred in the application is disputed by these appellants. According to these appellants, the said Shakuntalabai was with them at the time of filing of written statement and her so-called legal representatives had no right to participate in this appeal. It is for two reasons. One is, the original plaintiff has not impleaded them as a party defendant before the trial Court and second is, these appellants are representing the estate sufficiently.

Learned Advocate Shri Johrapurkar submitted that he has moved necessary application for joining them as party defendant and it is pending.

Learned Advocate Shri D.T. Shinde invited my attention to the provisions of Order XXII, Rules 2 and 4 of the Code of Civil Procedure. Whereas, learned Advocate Shri S.A. Dutonde invited my attention to the provisions of Order XXII, Rule 11 of the Code of Civil Procedure.

It is true that certain inquiry is required to be conducted prior to deciding who can be the legal representatives of the party on record. But it is also true that these appellants are not disputing that the proposed intervenors are the two sons of the deceased – Shakuntalabai.

In fact, when the appeal was filed, it was the bounden duty of these appellants either to join her legal representatives as

appellants or respondents. Because it is a rule that the parties who are on record before the trial Court needs to be joined as a party in the appeal also. The appellants have not done this.

So, I am inclined to allow the application. So far as issue of Will is concerned, this Court has not expressed any opinion. As their relationship being the sons of the deceased – Shakuntalabai is not disputed. It is sufficient for this Court to allow them to participate in this proceeding. Hence the order:-

### **ORDER**

- i. The civil application is **allowed**.
- ii. The proposed intervenors be joined as respondent Nos.7 and 8.
- iii. The necessary amendment be carried out by the appellants.
- iv. The civil application is disposed of.

### **Appeal Against Order No.19/2020**

Heard the argument of learned Advocate Shri D.T. Shinde for the appellants.

Due to paucity of time and technical interruption, arguments of respondents are kept on **29<sup>th</sup> September, 2020 at 2:30 p.m.**

This order be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

**JUDGE**

vijay