

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10562 OF 2019

Balasaheb Chimaji Bhadale Petitioners
(since deceased) thru LRs
Mangal Macchindra Bhadale & Anr.

Vs.

Shakuntala Kaluram Gilbile & Ors. Respondents

Mr. Venkatesh A. Shastry for Petitioners.
Mr. Sudhir V. Sadavarte for Respondent No. 4.

Coram : NITIN W. SAMBRE, J.
Date : 18TH FEBRUARY, 2021

P.C.:

1. In a suit for specific performance, Plaintiff No.2 died without any issue, however, Plaintiff No.1 during his lifetime executed a registered will dated 11th September, 2015 in favour of Plaintiff No. 2(a), based on which the application for bringing legal heirs has been brought on record. Similarly, Defendant no.4, is real brother of deceased Plaintiff No.1, so also the other Defendants, are real sisters, who also claimed to be legal heirs of Plaintiff No.1. Both these applications are dealt with by the order impugned dated 10th July,

2019. Feeling aggrieved the Petitioners-Plaintiffs took out these proceedings.

2 I have heard respective counsel.

3 From the claim of rival parties to the suit, it is noticed that there exist dispute as to, whether the Petitioner or Defendants are the legal heirs? In such an eventuality, the trial Court should have taken recourse to the procedure/Proceedings contemplated under the provisions of Rule 5 of Order XXII C.P.C. Admittedly, the said provisions are ignored by the Court below while passing order impugned.

4 In that view of the matter, the order impugned dated 10th July, 2019 passed below Exhibit 117 in Special Civil Suit No.1916 of 2008 is hereby quashed and set aside. The said application and application Exhibit 121 be decided in accordance with the provisions of Order XXII, Rule 5 C.P.C..

5. The Petition stands disposed of in above terms.

(NITIN W. SAMBRE, J.)