

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

CRA NO.52 OF 2022

PARVATABAI UTTAMRAO KHETRE AND OTHERS
VERSUS
CHMPABAI UTTAMRAO KHETRE DIED THR LRS KALYAN UTTAMRAORAUT

...

Advocate for Petitioners : Mr. Yuvraj S. Choudhari

...

CORAM : MANGESH S. PATIL, J.

DATE : 08.04.2022

PER COURT :

Heard the learned advocate for the petitioners who are the original defendants who are aggrieved and dissatisfied by the order passed by the trial court in a suit filed by one Champabai on the Application (Exhibit-242) whereby, the sole respondent prayed to come on record as her legal representative by propounding her will whereby she allegedly bequeathed her properties to him.

2. The learned advocate submits that the trial court has predetermined the issue of he being the legal representative of Champabai, who died issueless leaving behind no heirs except the revision petitioners, there was no question of anybody else coming on the record and the suit ought to have been disposed of as abated.

3. I have carefully gone through the order and the papers and considered the submission of the learned advocate.

4. As can be seen, the application (Exhibit-242) was erroneously filed by styling it as the one under Order VI Rule 17 of the Code of Civil

Procedure. In fact, the sole appellant having died and the respondent propounding her will had sought to prosecute the suit in her place, it was an application under Order XXII Rule 4.

5. Obviously, whether on the basis of the will being propounded he could be said to be her legal representative is an issue which is to be decided under Order XXII Rule 5 by the self same court. Merely because by the order under challenge the trial court has allowed him to come on record, it cannot be said that the trial court had intended to declare him as a legal representative more so, when in paragraph No.7 of the order it was specifically observed that the question as to the genuineness of the will and his right to claim any share in place of an executant of the will Champabai are the issues which can only be decided in the suit itself.

6. It is, therefore, quite clear that the impugned order merely permits the respondent to come on record. It does not relieve him of the responsibility of establishing the will and his rights thereunder which can happen only at a full fledged trial. Nothing has been prejudged by the trial court by simply allowing him to come on record. There is no merit in the revision. It is dismissed.

7. Needless to state that it would always be open for the revision petitioners to raise all the disputes as are available to them in the suit and the trial court would be obliged to frame appropriate issues and reply them.

(MANGESH S. PATIL, J.)