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

WRIT PETITION NO.9635 OF 2019

PHULABAI BHAGURAM SHIRGIRE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr A. N. Sabnis, Advocate for petitioner;
Mr K. B. Jadhavar, A.G.P. for respondents/State
Mr S. V. Dixit, Advocate for respondent Nos.3 and 4

CORAM : SMT. BHARATI DANGRE, J.

DATE : 28th January, 2022

PER COURT:

1. Heard the learned Counsel for the petitioner, the learned AGP and the learned Counsel for the contesting respondent Nos.3 and 4.

The petitioner is aggrieved by an order passed by the learned District Judge-2, Latur, in Regular Darkhast No.23/2016, seeking execution of decree passed in L.A.R. No.1052/2000 on 15/12/2010. In the said execution proceedings, the present petitioner claiming to be the widow of Bhaguram sought her impleadment on the ground that she is the legal heir of Bhaguram and therefore, interested in the execution proceedings. This

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application came to be rejected under the impugned order passed on 11/04/2019 and form the subject matter of the present petition.

2. Upon hearing the respective Counsel for the parties and on perusal of the record, it is manifest that one Krushna Shirgire had two sons Bhaguram and Narayan, who instituted L.A.R. 1052/2000 under Section 18 of the Land Acquisition Act for enhancement of compensation qua land from Gut No.129 admeasuring 7H 47R, which came to be acquired by the State for Renapur Medium Project at Pangaon. During the pendency of the Reference, Bhaguram expired on 22/07/2005 and the present petitioner Phulabai is his only heir as he did not have any children.

3. In the year 2006, the petitioner instituted a Special Civil Suit No.114/2006, in which, the present respondent Nos.3 and 4 are impleaded as defendant No.1 and 2 and the said suit sought a declaration of partition and separate possession, qua the suit property described in para No.1 of the plaint and this property being the agricultural land situated in Gut No.904, admeasuring 5A 59R and situated in Gut No.129 admeasuring 3H 49R situated at village Pangaon, Tq. Renapur, Dist. Latur. In the plaint, the

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plaintiff/present petitioner specifically pleaded that suit properties are the ancestral properties of the deceased Bhaguram, defendant No.1 and others, inherited from their father Krushna and after death of Krushna, Bhaguram and his brother Narayan were jointly cultivating the agricultural properties in Gut Nos.129 and 904. It was specifically pleaded in the said suit that area admeasuring 7H 47R out of Gut No.129 was acquired by Government for Renapur Medium Project and the suit property is the remaining land out of block No.129. It was also specifically pleaded that the award of the acquired land was passed in 1999 and Bhaguram and defendant No.1 had jointly received compensation of Rs.10,58,350/- and they had launched a Reference in the Civil Court for enhancement of the compensation. Pertinent to note that the said suit was filed by the petitioner/plaintiff to the exclusion of the land, which was acquired and which was subject matter of Reference. The suit came to be decreed on 02/05/2009, pertinent to note that only as regards the suit property, which did not cover the property which was subjected to Reference before the District Judge in L.A.R. No.1052/2000.

4. L.A.R. No.1052/2000 was partly allowed on 29/09/2010 and pertinent to note that in the said Reference, Bhaguram was

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substituted through his legal heir Kishor Narayan Shirgire, i.e. respondent No.4 to the present petition and the Reference Court recorded that on death of Bhaguram during pendency of the Reference, Kishor is impleaded on the basis of alleged will executed by Bhaguram in his favour, though no probate is filed by Kishor.

Answering the reference in the affirmative, the Reference Court, when it came to the disbursement of the amount in paragraph Nos.20 and 21, has recorded as under :

“20. At this juncture, it is pertinent to note that though the name of Kishor Narayan Shirgire is added as claimant No 1/1 but he has not produced the probate. The alleged will is dt 15-7-2005. The same is unregistered will. The deceased Bhaguram Krishna Shirgire died immediately thereafter on 22-7-2005.

21. Considering the circumstances of the matter, I am of the opinion that 50% amount of the share of Bhaguram Krishna Shirgire be paid to his L.Rs. only after ascertaining this aspect by the Competent Court. The claimant No.1/1 Kishor Narayan Shirgire is directed to get his right established in appropriate court. No amount of the share of Bhaguram shall be paid to any person; unless the order of probate is produced or

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any other order of the competent court authorizing the person to receive the amount as the legal heir of deceased Bhaguram.”

5. Necessarily in the operative portion, though the claimant No.2 Narayan is held entitled for 50% of the calculated compensation, as far as the 50% amount of the share of Bhaguram to be paid to his legal heir, is held to be available only after determination of the said aspect by the Competent Court or production of probate certificate or any other order. The claimant No.1 Kishor, who claim to be the legal heir of Bhaguram through alleged will, is directed to get his right established from the Competent Court.

It is this decree which is put up for execution and in which, the petitioner is seeking her impleadment. On considering the claim of the petitioner under order I Rule 10 (2) read with Section 151 of the CPC and the submission on behalf of the decree holder, the learned Court, on referring to the sequence of events, recorded that decree which is under execution is only qua 7H 47R out of Gut No.129 and as far as the said land is concerned, which was the subject matter of acquisition and when the Reference was

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filed, the substitution of Bhaguram was made through his nephew Kishor, on the basis of the alleged will executed in the year 2005.

6. Pertinent to note that the petitioner, who approached the Executing Court, seeking her impleadment, has never questioned the will executed by her husband, under which the rights in property, which was subject of acquisition, was bequeathed by her late husband in favour of Kishor, son of Narayan. Till date, she has not posed any challenge to the alleged will.

Since the will is not challenged by any one and the substitution of Bhaguram was permitted on the basis of the alleged will, though the award of compensation in his favour has been withheld by the Reference Court, subject to his right being established from the Competent Court or on production of probate, or any other order establishing his claim, as far as the present petitioner is concerned, she has not claimed any interest in the said property and throughout this time, the property which was subject matter of acquisition by the State Government and in respect of which, the award was declared and merely on the basis of a declaration in her favour in Special Civil Suit No.114/2006, which is also against the remaining property out of Gut No.129,

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i.e. property other than one which was covered under the award passed under the Land Acquisition Act, will not make her entitled for the fruits of the decree.

The definition of decree holder, being a person in whose favour is a decree has been passed or who has in his favour an order capable of execution, and in the present case, applying the said parameters, particularly when as far as the L.A.R. is concerned, since in the said proceeding, the legal heir of Bhaguram is already substituted on the basis of the alleged will, which is not questioned by any one, the learned Court has rightly refused her impleadment on the parameters of order I Rule 10.

I see no legal infirmity in the impugned order and therefore, by upholding the same, the writ petition is dismissed.

(SMT. BHARATI DANGRE, J.)

sjk