

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

WRIT PETITION NO.1100 OF 2021

PANKABAI LAXMAN SARODE DEAD THR LRS RAMESH LAXMAN
SARODE AND OTHERS ..PETITIONERS

VERSUS

GAJANAN NAMDEO TALELE DEAD THR LRS PRABHAVATI
GAJANAN TALELE AND ANOTHER ..RESPONDENTS

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Mr. S. H. Tripathi, Advocate for the Petitioners.
Mr. S. G. Chapalgaonkar, Advocate for Respondent
Nos.1A to 1D.
Mr. G. S. Rane, Advocate for Respondent No.2.

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CORAM : SANDEEP V. MARNE, J.

DATED : 05th SEPTEMBER, 2022.

PER COURT:-

1. By the present petition the petitioners challenge order dated 12.07.2019 passed below Exhibit-36 and order dated 26.09.2019 passed below Exhibit-39. By order dated 12.07.2019 passed below Exhibit-36, the intervention application filed by Pankabai Laxman Sarode has been rejected solely on the ground that she has died on 04.01.2019. By order dated 26.09.2019, the application filed by legal heirs of the Pankabai to bring them on record is rejected on the ground that Pankabai's intervention application was already rejected on 12.07.2019.

2. Mr. Tripathi, learned counsel appearing for the petitioner submits that Pankabai died on

04.01.2019 and immediately thereafter the petitioners herein filed application for substitution of legal heirs on 20.03.2019. He submits that on 12.07.2019 when the Court rejected Pankabai's application for intervention, the application at Exhibit-39 was already filed and pending before the Court. He submits that both the applications ought to have been taken into consideration rather than first rejecting Pankabai's application for intervention and later rejecting the application of legal heirs on the ground of rejection of Pankabai's application. Mr. Tripathi, relies upon the judgment of this Court in **B. B. Paymaster and others Vs. Mrs. Baurawa Sangappa Kodapatti and others AIR 2005 BOMBAY 48** to buttress his contention that when a close relative of the deceased is alive who may have some interest in the estate of the deceased, their intervention in the proceedings ought to have been allowed by the Court rather than rejecting the same on technicalities. Mr. Tripathi, further submits that in similar circumstances the intervention filed by Chandrakant Vitthal Talele was allowed by the Court and such order been upheld by this Court by order dated 20.06.2018 passed in Writ Petition No.7857/2016.

3. Mr. Chapalgaonkar, learned counsel appearing for respondent nos.1A to 1D supports the order passed by the Trial Court. He however fairly submits that rather than coming on record as legal

heirs of Pankabai, the petitioners have the option of filing their own independent intervention application, merits of which can be decided by the Court. He however submits that the locus and entitlement of the petitioners in filing such an application may be left to the wisdom of the Trial Court.

4. Having heard the learned counsel for the parties, I am of the opinion that the Trial Court has clearly erred in passing the impugned orders dated 12.07.2019 and 26.09.2019 in applications below Exhibits 36 and 39. On the date on which the intervention application of Pankabai below Exhibit-36 came up for decision before the Court on 12.07.2019, application to bring on record the legal heirs was already filed on 20.03.2019. Therefore, the correct course which ought to have been adopted by the Trial Court was to consider and decide both the applications together rather than rejecting the application of Pankabai solely on the ground that she had died on 04.01.2019. Consequently, the impugned orders dated 12.07.2019 and 26.09.2019 are set aside and the application below Exhibit-39 stands allowed. However, the locus and entitlement of the petitioners to intervene in the proceedings is something which is left to the wisdom of the Trial Court to be decided on the basis of submissions made before it and no opinion is expressed thereon.

5. Writ Petition is accordingly allowed. No costs.

(SANDEEP V. MARNE)
JUDGE

Devendra/September-2022