

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

940 CIVIL APPLICATION NO.9307 OF 2021
IN FA/1142/2021 WITH CA/14532/2018 IN FA/1142/2021 WITH
CA/4509/2021 IN FA/1142/2021

SHIVAJI LAXMAN PAWAR (DIED) THR LRS MANDAKINI AND ANR
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...
Advocate for the Applicant : Mr. R.D. Biradar
AGP for Respondent State : Mrs. D. S. Jape
Advocate for respondent No.3-B,3-D,P. B. Rakhunde

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CORAM : S. G. DIGE, J.
DATE : 01.07.2022

PER COURT :-

1. Heard learned counsel for the applicant and learned AGP for respondent No.3A to 3D.
2. Leave to amend in the application is granted.
3. Learned counsel for the applicant submits that during the pendency of the appeal original respondent Shivaji Laxman Pawar is died. The applicant has made application No. 5 of 2021 before the learned Civil Judge, Junior Division, Umerga for getting heirs ship certificate. The applicants got certificate in the name of the applicant and respondent Nos. 1 to 4. Learned counsel for the applicant further submits that respondent No.3-A & 3-B are daughters and respondent No.3C & 3D are sons of second wife of deceased Shivaji. They are added as a party in this appeal. Applicants are daughters of first wife of Shivaji but

they are not added as party to the present proceeding hence requested to add applicant as party in this appeal which is filed by State authority.

4. Learned counsel for respondent Nos. 3A to 3-D strongly objected to allow the application. Learned counsel submits that there was compromise between deceased Shivaji and his first wife. The applicants are daughters of first wife. The said compromise has taken place in Regular Civil Suit No. 166 of 1972 and compromise decree was passed on 16.10.1972. By the said compromise decree the first wife of deceased Shivaji had relinquished her all rights on the property of Shivaji. Hence daughters of first wife of Shivaji cannot be entitled to get compensation.

5. Considering submission of both the learned counsel it is not disputed that applicants are the kids of first wife of deceased Shivaji. Second wife and her kids have been added as party in this first appeal. The appeal is preferred by the State authority against the order of reference Court so this Court is not deciding the rights of legal heirs of the deceased. This Court has to decide the legality of the order passed by learned reference Court. Mere adding as a party to the present

appeal cannot be ground to decide the rights. The applicants are the legal heirs of the deceased Shivaji and it is not disputed by the learned counsel for respondent No.3. Hence I pass the following order.

ORDER

- (I). Application is allowed.
- (ii). Appellant to take steps within two weeks.

**(S.G. DIGE,)
JUDGE**

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