

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

WRIT PETITION NO. 13048 OF 2021

Radhabai Narayan Mote and others .. Petitioners

Versus

Jagan Kashinath Mote
Since deceased through his
L.Rs. Devidas Jagan Mote
Through its Legal Representative
and others .. Respondents

Shri Anil S. Bajaj, Advocate for the Petitioners.

Shri Shrinivas. M. Ganachari, Advocate for the Respondent Nos.
2 to 4 and 8.

Shri Vivek V. Bhavthankar, Advocate for the Respondent Nos. 5
to 7.

CORAM : SANDEEP V. MARNE, J.

DATE : 19TH DECEMBER, 2022.

FINAL ORDER :

. Petitioners are aggrieved by the order dated 09th August, 2021 passed by the 08th Jt. Civil Judge Senior Division, Aurangabad, by which the Trial Court, on its own has directed the plaintiffs to add legal heirs of deceased Ramchandra Mahalkar as defendants to the suit under provisions Order I Rule 10 of the Code of Civil Procedure.

2. The suit is filed by plaintiffs (petitioners) against the defendants seeking partition. Late Ramchandra Mahalkar was apparently original owner of the land and mortgaged the suit

property in favour of Kashinath Mote. Petitioners and defendants are legal heirs of Kashinath Mote and are engaged in litigation claiming shares in the property of Kashinath.

3. Mr. Bhavthankar, learned counsel appearing for respondent Nos. 5 to 7 and Mr. Ganachari, learned counsel appearing for respondent Nos. 2 to 4 and 8 do not oppose the petition.

4. It appears that, late Ramchandra Mahalkar had instituted civil suit for redemption of mortgage, which was decreed and that decree was upheld upto this Court. However, execution proceedings filed by the legal heirs of Ramchandra Mahalkar came to be dismissed in default in 2003. Thereafter, no efforts are made by the legal heirs of Ramchandra Mahalkar to restore execution proceedings, nor fresh execution proceedings have been filed. Net result of the impugned order dated 09th August, 2021 passed by the Trial Court is such that the legal heirs of late Ramchandra Mahalkar would be in a position to reclaim their alleged ownership in the suit property, remedy in respect of which possibly got extinguished on account of dismissal of the execution proceedings in default.

5. Plaintiffs do not claim any relief against late Ramchandra Mahalkar or his legal heirs. It is well established principle of law that plaintiff is *dominus litis* of his suit and cannot be forced to seek relief against any person against his desire. Following

that principle, petitioners cannot be forced to claim any relief against legal heirs of Ramchandra Mahalkar.

6. Also relevance is the fact that if any rights are claimed by legal heirs of Ramchandra Mahalkar, they have to avail their own remedies in respect of the same. As observed hereinabove such remedies were apparently exercised, which met with a dead lock in the year 2003 with dismissal of execution proceedings in default. Mr. Bajaj would contend that considering provisions of the Limitation Act, legal heirs of late Ramchandra Mahalkar would now not be able to file execution proceedings for execution of decree for redemption. I do not wish to comment anything in this regard. Suffice it to state that net result of the impugned order of the Trial Court is that in a suit seeking partition of the suit land between members of Kashinath Mote, the Trial Court has permitted the legal heirs of Ramchandra Mahalkar to participate, which may result in they reclaiming their right of redemption of the suit property. Apart from the issue of limitation the same would completely alter entire suit. In my view, therefore, the order of the Trial Court directing impleadment of legal heirs of late Ramchandra Mahalkar is erroneous. Writ petition is accordingly allowed. Order dated 09th August, 2021 passed by the 08th Jt. Civil Judge Senior Division, Aurangabad below Exhibit 01 in Spl. C. S. No. 190 of 2015 is set aside. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]