

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13930 OF 2021

PRASAD BHALCHANDRA VAIDYA AND ANOTHER
VERSUS
PUSHPABAI BAPURAO VAIDYA

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Mr. Prasad Vaidya- Petitioner- Party-in-person.
Advocate for Respondent: Mr. G.L. Deshpande

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 19th AUGUST, 2022

ORDER :

1. The petitioners are real brothers. Petitioner No. 1 is an advocate who has argued this matter as party-in-person.
2. The petitioners filed Civil Miscellaneous Application No. 614/2019 under section 2 of Bombay Regulation Act, 1827, seeking heirship certificate in respect of late Prabodh s/o Bapurao Vaidya, who according to the petitioners is their cousin brother. In the said proceeding, Trial Court has passed order on 30.09.2019 observing that, from the evidence affidavit filed by Petitioner No. 1 and the family tree given by him, *prima facie* Prabodh Vaidya expired in the year 2013. The property mentioned in the application is his independent property and therefore as per Hindu Succession Act, *prima facie* first right of

heirship is of his father Bapurao. However, since Bapurao is also dead as per the family tree and Hindu Succession Act, along with the petitioners, their sister Shailaja, sons of Krushnaji namely Sadanand and Suryakant, Ashok Ujlambkar and his sister Suman, so also son of sister of deceased Bapurao namely Ujlambkar, also *prima facie* appears to have heirship right in the said property.

It is further observed that apart from this on the death certificate of deceased Prabodh his mother's name is recorded as Pushpabai Vaidya. Petitioner No. 1 has stated on oath that Pushpabai never married with Bapurao. As per the contention of Petitioner No. 1 earlier also for getting heirship certificate application No. 269/2013 and 12/2016 were filed. Petitioners are ready to produce documents in that behalf. The Trial Court after taking into consideration all these aspects directed to add the abovenamed persons as party respondents along with their full name and address.

3. The petitioners questioned this order by filing a review application Exhibit-21 along with delay condonation application Exhibit-19. By order dated 27.11.2021, delay condonation application filed by the petitioners is allowed.

However, review application Exhibit-21 is rejected on the same day. The petitioners are aggrieved by the orders passed below Exhibit-1 dated 30.09.2019 and order passed below Exhibit-21, dated 27.11.2021.

4. Heard the Petitioner No. 1 party-in-person.

5. It is pertinent to note that the petitioners have not arrayed the persons who are directed to be added as party respondents by the Trial Court, in the proceeding filed by the petitioners under the Bombay Regulation Act, 1827.

6. When the party-in-person was asked that said persons are necessary party to this petition and they are required to be added as party respondents, the petitioner party-in-person has flatly refused to add them as party respondents, as according to him they are not necessary party.

7. The petitioner was cautioned that his petition may be dismissed on the sole ground that necessary parties are not impleaded in the petition, still he refused to add them as party respondents and insisted for hearing the petition on merit.

8. The order passed by the Trial Court directing to add above named persons as party respondents in the proceeding filed by the petitioners is impugned in the present petition. No order adverse to the interest of said persons can be passed in the present petition, without hearing them and without they being party to this petition. Orders, if any, passed in their absence would be in violation of principles of natural justice.

9. The writ petition is therefore dismissed on the sole ground that proposed respondents, who are directed to be added by the Trial Court, are not made party respondents in the present petition.

[NITIN B. SURYAWANSHI, J.]