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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 1138 OF 2022**

SHRI. PRADIP SHANKAR PRADHAN

....PETITIONER

V/s.

SMT. LAXMIBAI GANPAT PRADAN DECD
THRU LR AND ORS

.....RESPONDENTS

Mr. Harshad Sathe for the Petitioner

**CORAM : NITIN W. SAMBRE, J.
DATE: FEBRUARY 4, 2022.**

P.C.:

- 1) Petitioner-Plaintiff initiated a Suit for cancellation of Deed executed *inter-se* between Defendant nos. 1 & 2 in which other ancillary reliefs are also claimed.
- 2) After death of Defendant no. 1, Petitioner-Plaintiff sought his deletion vide Exhibit 68 whereas vide Application Exh. 71, Ramesh Raut claiming to be holding a registered Will executed by Defendant No. 1 in his favour sought substitution to Defendant no. 1 by impleading him. Vide impugned order dated 27/11/2018, Application Exh. 68 for deletion of Defendant no. 1 came to be rejected whereas Application Exh. 71 for substitution of Ramesh Raut to Defendant no.

1 is allowed. Hence, this Petition.

3) Submissions of learned counsel for the Petitioner are, even if the substituted person Ramesh Raut claim to have registered Will in his favour, he is not necessary or appropriate party to the Suit. Shri. Sathe would claim that Petitioner-Plaintiff is dominus litis and in case if he fails to add said Ramesh Raut at the place of Defendant no. 1, he will suffer necessary consequences. He would further claim that considering the nature of claim in the Suit, said Ramesh Raut is not a necessary or appropriate party to the Suit under the Will.

4) I have appreciated the said contentions.

5) Admittedly, there is registered Will in favour of Ramesh Raut. Based on the same, the Court below was justified in allowing Application Exh. 71 pursuant to provisions of Section 2(11) of the Code of Civil Procedure, 1908. Ramesh Raut can be termed as legal representative as he is representing the estate of deceased Defendant no. 1 and by virtue of Will, he has come out with a case that the estate of deceased Defendant no. 1 has devolved on him.

6) That being so, prayer for rejection of deletion of Defendant no. 1 and that of substitution of Ramesh Raut to Defendant no. 1 is rightly

rejected and is in tune with the aforesaid legal provisions.

7) No case for interference is made out. Petition as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]