

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 11400 OF 2019

Shri Balaram Krushna Patil	...	Petitioner
<i>Versus</i>		
Shri Govind Tukaram Bhoir decd. Through LHRs and Ors.	...	Respondents

Mr. Prakash Mahadik for the Petitioner.
Mr. Ajay S. Pagedar i/by M. J. Bhatt for the Respondent 11.
Mr. G. S. Jain for the Respondents 3 to 10.

CORAM: ROHIT B. DEO, J.
DATE : 15th JULY, 2022

P.C. :-

. The petitioner is the son of deceased Mrs. Demki who was the daughter of deceased Tukaram. Regular Civil Suit 898 of 2013 is instituted by the plaintiff therein Mr. Govind, who is the son of Tukaram, seeking partition and separate possession. Mr. Govind has since expired and the suit is prosecuted by his legal heirs.

2. According to the plaintiff, his mother had share in the ancestral property which he is inherited and he is therefore a necessary party to the suit for partition. The plaintiff preferred an application under Order 1 Rule 10 seeking impleadment, which is rejected by the order impugned on the short ground that the principle of *res judicata* is applicable. Such an observation is made by the learned Trial Judge on the assumption that the earlier application under Order 1 Rule 10 which was preferred by the plaintiff seeking impleadment of the legal heirs of

deceased Mrs. Demki, is rejected.

3. I am satisfied that the order impugned must be set aside.

4. The petitioner and for that matter, the other legal heirs of deceased Mrs. Demki were not before the Court. They were not heard when the plaintiff's application seeking impleadment was rejected. The least which the learned Trial Judge could have done was to independently consider the application under Order 1 Rule 10 preferred by the petitioner, on its own merits rather than refusing to look into the application by invoking the provisions of Section 11 of Civil Procedure Code, 1908.

5. The order impugned is set aside.

6. The learned Trial Judge is requested to decide the application under Order 1 Rule 10 (**Exhibit 124**) preferred by the petitioner on its own merits.

7. The learned Trial Judge is further requested to expedite the disposal of the suit.

8. Petition is disposed of.

[ROHIT B. DEO, J.]

Note : This order is corrected as per speaking to the minutes order dated 29th July, 2022.

BIPIN
DHARMENDER
PRITHIANI

Digitally signed
by BIPIN
DHARMENDER
PRITHIANI
Date:
2022.07.29
17:58:58 +0530