

Anand

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

WRIT PETITION 136 OF 2019

Dattatraya Kundlik Thorat .Petitioner

Vs.

Narendra Kundlik Thorat & ors. .Respondents

Mr. P. D. Dalvi a/w Ms N. P. Borate & Mr. Rushikesh Patil i/b.
Mr. G. R. Agrawal, Advocate, for the Petitioner
Mr. V. B. Tapkir, Advocate, for the Respondents 1 & 2A

CORAM : ROHIT B. DEO, J.

DATE : 25.07.2022

P. C.

. The challenge is to the Order dated 21.09.2018 rendered by the learned District Judge-5 & Additional Sessions Judge, Nashik below Exh.20 in Regular Civil Appeal 105 of 2008, whereby the Application preferred by the Respondent herein Narendra Kundlik Thorat for being brought on record as legal heir of the deceased – Kundlik Laxman Thorat, is allowed.

2. The learned Appellate Judge notes that the trial Court conducted an enquiry under O. XXII, Rule 5 of the CPC

& held that Mr. Narendra Kundlik Thorat and Mr. Dattatraya Kundlik Thorat are the legal representatives of the deceased - Kundlik Laxman Thorat. The learned Appellate Court then reasoned that since the adjudication under O. XXII, Rule 5 of the CPC is not challenged, Mr. Narendra Kundlik Thorat and Mr. Dattatraya Kundlik Thorat will have to be brought on record as legal heirs of the deceased - Kundlik Laxman Thorat.

3. Twin fold submissions are canvassed by the learned counsel for Mr. Dattatraya Thorat. The first submission is that on 21.09.2018, learned counsel appearing for Mr. Dattatraya Thorat was not present and adjournment was sought which as a fact was granted by the Appellate Court. Having granted an adjournment, on the same day, the order impugned is passed without affording an opportunity of hearing to the Petitioner. The other submission is that irrespective of the adjudication under O. XXII, Rule 5 of the CPC, Narendra Thorat could not have been brought on record as legal representative of Kundlik Thorat in view of the conflict of interest. It is pointed out that the suit was as a

fact instituted by the deceased – Kundlik Thorat seeking a declaration that the suit property is his self acquired property and while the Sale Deed was executed in the name of Narendra, the entire consideration was provided by the Plaintiff – Kundlik Thorat. The Suit is decreed and the declaration as prayed is granted by the trial Court. It is in this view of the matter, that according to the Petitioner, Narendra cannot represent the deceased – Kundlik Thorat in the Appeal.

4. I am not inclined to delve deeper on the latter submission, since I am satisfied that the learned trial Court committed an error in deciding the Application – Exh.20 although the request for adjournment was granted in view of the ill health of the counsel.

5. The order impugned is set aside.

6. The learned trial Judge is requested to decide the Application – Exh. 20 afresh after hearing all the stake holders and in accordance with law.

7. Needless to observe every contention on behalf of the Petitioner and in rebuttal is kept expressly open.

8. The Petition is disposed of.

9. At the oral request of the Petitioner, prayer clause (b) is deleted.

(ROHIT B. DEO, J.)