

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

WRIT PETITION 5195 OF 2019

Gayatri Krupashanker Dubey and Anr.	...	Petitioners
<i>Versus</i>		
Suresh Fakirrao Rajole and Ors.	...	Respondents

Ms. Preeti Walimbe for the Petitioners.
None for the Respondents.

CORAM: ROHIT B. DEO, J.
DATE : 7th JULY, 2022

P.C. :-

- . Heard Ms. Walimbe for the petitioners.
2. While respondents 1 and 2 are duly severed, despite several opportunities, there is no appearance on their behalf.
3. I have no option but to decide the petition without the assistance of the learned counsel for the respondents.
4. The challenge is to the order dated 9th October, 2018 rendered by 3rd Joint Civil Judge, Senior Division, Kalyan in Regular Civil Suit 604 of 2013 whereby the application preferred by the petitioners seeking impleadment as legal heirs of deceased defendant 3, is rejected.
5. The defendant 3 expired on 30th September, 2017. According to the petitioners, while the plaintiff preferred application for bringing on record the legal heirs of defendant 3, the said application did not disclose the names and status of the petitioners herein as legal heirs.

According to the petitioners, they are married daughters of defendant 3 and are therefore necessary parties to the suit.

6. It appears that the application preferred by the petitioners was resisted by the plaintiff who contended that the petitioners did not produce documents to establish that they are legal heirs of deceased defendant 3 nor have the other legal heirs informed the plaintiff that the petitioners are also the legal heirs of deceased defendant 3.

7. Notably, the legal heirs of deceased defendant 3 who have been brought on record by the plaintiff did not oppose by the petitioners in as much as no reply is filed by them in opposition. The short ground on which the learned Trial Judge rejected the application is that the suit is filed on the basis of agreement executed between the plaintiff and defendant 1 and according to the plaintiff, the defendant 1 transferred the development rights in favour of defendant 2 firm of which defendants 3 and 4 are partners; the learned Trial Judge reasoned that the petitioners ought to have demonstrated that after the death of their father defendant 3, they have become partners of the defendant 2 firm.

8. Petitioners have filed on record an additional affidavit dated 24th November, 2021 which is accompanied by several documents which would *prima-facie* suggest that they are indeed the married daughters of deceased defendant 3. Their right to impleadment in the suit could not have been jettisoned on the premise that they have not demonstrated that they have become partners of defendant 2 firm. Such an issue could have been adjudicated by the learned Trial Court at an appropriate stage.

9. The application exhibit 54 preferred by the petitioners for impleadment as legal heirs of deceased defendant 3 is allowed. It is needless to observe, whether the petitioners have become partners of the defendant 2 firm, shall be adjudicated at an appropriate stage, if at all such adjudication is necessary. This observation is made in the context of the submission of the learned counsel for the petitioners that such consideration is absolutely unnecessary in the context of suit and the issues involved therein.

10. Subject to the observations supra, the petition is allowed in the aforestated terms.

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[ROHIT B. DEO, J.]