

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO. 3974 OF 2021**

S. Ganesh S/o Laxmanswamy Naidu & Others

-- Petitioners

Vs.

N. Narayanan Nair & Others

-- Respondents

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

Mr. Masood Shareef, Advocate for Petitioners

Mr. H.I. Kothari, Advocate for Respondent

**CORAM : MANISH PITALE, J.**

**DATE : 24<sup>th</sup> JUNE, 2022**

By this writ petition, the petitioners have challenged order dated 01/09/2021, passed by the Court below, whereby an application at Exh.190, has been allowed. The said application was moved by respondent herein, who is the original defendant and counter claimant before the Court below.

2. During the pendency of the suit and counter claim, the original plaintiff No.2 has expired and on an application moved by the petitioners, the son and daughter of the original plaintiff No.2 were brought on record as the legal representatives. The said order dated 05/03/2021, was not challenged and the said two legal representatives of original plaintiff No.2 came on record.

3. Subsequently, the respondent i.e. original defendant moved an application for bringing on record legal representatives in the counter claim, wherein a number of persons were sought to be added as legal representatives of the original plaintiff No.2 i.e. defendant No.2 in the counter claim. In the application itself it was stated that the said persons sought to be brought on record are grand-sons and grand-daughters of the original plaintiff No.2 i.e. defendant No.2 in the counter claim.

4. The Court below by the impugned order has allowed the said application.

5. The learned counsel appearing for the petitioners raised strong objection to the manner in which the application filed by respondents stood allowed by the impugned order. It was submitted that when the son and daughter of the original plaintiff No.2 were already brought on record and sufficiently represented the estate of the deceased plaintiff, there was no occasion for the respondent No.2 to have attempted to bring on record number of persons as legal representatives of the said original plaintiff No.2 i.e. defendant No.2 in the counter claim by claiming that the said persons were the grandsons and grand-daughters of deceased plaintiff. Reference was made to judgments of the Hon'ble Supreme Court and this Court on the aspect that even when some of the legal representatives are not brought on record and the estate of the deceased litigant is

sufficiently represented, the requirement of law stands satisfied. On this basis, it was submitted that the impugned order deserved to be set aside.

6. On the other hand, the learned counsel appearing for the respondent submitted that there was no protest lodged on behalf of the petitioners when the aforesaid application was moved by respondent and that in any case there were other litigations between the parties and that the grandsons and grand-daughters sought to be brought on record were certainly proper parties in the facts and circumstances of the present case.

7. This Court has considered the impugned order and heard the learned counsel for the rival parties in the backdrop of the material placed on record.

8. It is found that the order passed by the Court below on 05/03/2021, permitting the son and daughter of original plaintiff No.2 to be brought on record as legal representatives was not challenged. It was claimed in the application moved at Exh.190, on behalf of the respondent that a number of other persons deserved to be brought on record as legal representatives of the deceased plaintiff No.2 i.e. defendant No.2 in the counter claim. But, in the said application itself, it is stated that these persons are the grandsons and grand-

daughters of deceased original plaintiff No.2 and being coparceners they need to be brought on record.

9. This Court is unable to understand that when the estate of original plaintiff No.2 is sufficiently represented by son and daughter, who are already brought on record, where is the necessity to insist upon bringing on record grandsons and grand-daughters of the deceased plaintiff No.2. The judgments relied upon by the learned counsel appearing for the petitioner i.e. **N.K. Mohd. Sulaiman Sahib Vs. N.C. Mohd. Ismail Saheb and others** reported in **AIR 1966 SC 792**; **Daya Ram and others Vs. Shyam Sundari and others** reported in **AIR 1965 SC 1049** and **Rukminibai Motiram Kshirsagar (deceased) through its legal heirs and others Vs. Manoramabai Mallikarjun Bagale (deceased) through Legal Heirs** reported in **2020(2) Mh.L.J. 756**, are a complete answer to the question sought to be raised on behalf of the respondent.

10. In view of the above, this Court is convinced that the impugned order is unsustainable. Accordingly, the writ petition is allowed and the impugned order is quashed and set aside.

11. The Court below is expected to decide the suit within six months from today.

**JUDGE**