

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

**WRIT PETITION NO. 8068/2022**

(Shalini w/o. Gajanan Sakharwade Vs. Gajanan s/o. Nanaji Gabhane )

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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. P.A. Dharaskar, Advocate for petitioner.

**CORAM : VINAY JOSHI, J.**  
**DATED : 15/12/2022.**

Heard.

2. This petition is of original defendant, seeking to set aside the order dated 20.06.2022, by which the Trial Court has allowed an application for bringing legal heirs of deceased plaintiff on record.

3. Initially, one Vittahl Gabhane has filed the Regular Civil Suit No. 40/2017 seeking declaration that the gift deed dated 18.07.2016 executed in favour of petitioner (defendant) be declared as null and void and consequential relief of injunction to protect possession. It was the case of original plaintiff that gift is void since it was executed by coercion, misrepresentation, under undue influence and fraud. The petitioner (defendant) contested the suit by filing written statement. In the meantime, sole plaintiff died on 31.03.2019, thereafter respondent Gajanan has filed an application for bringing legal heir of original plaintiff on record. The said application was filed in terms of Order XXII Rule 3 of the Code of Civil Procedure ('CPC') alleging that though sole plaintiff

died, cause of action survives. It is respondent's case that original plaintiff has bequeathed suit property in his favour by executing registered gift-deed dated 18.11.2017 and thus, requested to bring him on record in the capacity of legal representatives. The petitioner (defendant) has objected said application by contending that the legatee of alleged "Will" cannot be termed as legal representative. He would contend that the suit was already abetted. The Trial Court has allowed said application, surprisingly without assigning a reason in single word. The impugned order is reproduced as below:-

*"Heard learned Advocate of both sides.*

*Application is allowed. Plaintiff to make change in title in 15 day. LRs to pay cost of 100/- to defendant."*

4. The petitioner has resisted the application on the locus of respondent stating that he cannot be brought on record as a legal representative of deceased sole plaintiff. Whether legatee can be termed as a legal representative within the meaning of Section 2(11) of the CPC is a question for consideration. However, the Trial Court without referring objection or assigning any reason, has allowed the application. The provisions of Order XXII Rule 5 of the CPC prescribes that when a question arises as to whether any person is or is not the legal representative of deceased plaintiff, such question shall be determined by the Court. Thus, in above

scenario, it was expected from the Trial Court to adjudicate the issue in determining whether the respondent can be termed as a legal representative. However, the Trial Court adopted a novel way by simply disposing of application in single word that the same stands allowed. The impugned order shows total non-application of mind. The order which is bereft of reasons is against the principal of natural justice. It is one of the foundational principal of judicial system that every action or order shall be preceded by reasons. For the said sole reason, the impugned order does not survive at all.

5. Today, the matter has come up for first time for consideration. In natural course, it is expected to hear other side before deciding the petition. The impugned order is glaringly erroneous, therefore notice is dispensed with. It is necessary that the Trial Court shall once again hear both sides and pass a speaking order by assigning reasons for whatever conclusion he may arrive. Since I am directing the Trial Court to re-decide the application, therefore also I do not feel it necessary to hear other side because they would get opportunity of hearing before the Trial Court.

6. In view of above, petition stands allowed. Impugned order dated 20.06.2022 passed at Exh. 26 is hereby quashed and set aside.

7. Application at Exh. 26 is restored on the same stage. The Trial Court shall hear both sides and decide the application afresh in accordance with law. This time, it is expected that the Trial Court shall assign the reasons for arriving on particular conclusion.

8. Petition stands disposed of in above terms.

(VINAY JOSHI, J.)

*Gohane*

Digitally  
signed by  
JITENDRA  
BHARAT  
GOHANE  
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