

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8993 OF 2022

Ankush S/o Narayan Jagdale
and another

.... Petitioners

Versus

Smt. Rangubai Maruti Jagdale
Deceased (Died issue less)
and others

.... Respondents

.....

Mr. P.R. Nangare, Advocate for the Petitioners
Mr. Y.V. Kakade, Advocate for Respondent Nos.2-A to 2-D
Mr. Shubham Jayabhar, Advocate h/f Mr. D.R. Jayabhar,
Advocate for Respondent Nos.13, 14-B, 14-C, 16 and 17

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 09th OCTOBER, 2023

ORDER :

1. Leave to correct the prayer clause.
2. Petitioners/defendants are aggrieved by the order passed by learned 2nd Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit-127 in Special Civil Suit No.65 of 2018, thereby allowing application filed by respondents/plaintiffs under Order XI Rule 17 of the Code of Civil Procedure.

3. Plaintiffs filed suit for declaration and partition. Defendants opposed the suit by filing written statement. During the pendency of suit, plaintiff No.1 Smt. Rangubai Jagdale expired on 12/10/2020, plaintiff No.2 Ashok Jagdale also expired on 20/10/2020. After death of plaintiff No.2, his legal representatives (respondent Nos.2-A to 2-D) are brought on record. Thereafter, legal representatives of plaintiff No.2 filed application Exhibit-127 claiming that, deceased plaintiff No.1 had 13 *Aane 4 paisa* share in the suit property and legal representatives of deceased Vithoba Jagdale had 2 *Aane 8 Paisa* share in the suit property, and declaration to that effect and partition is sought in the suit. Plaintiff No.1 has executed a will in favour of plaintiff No.2 on 27/04/2018. After death of plaintiff No.1, plaintiff no.2 on the basis of will, has become owner of the share of plaintiff No.1. Therefore, legal heirs of plaintiff No.2 are also the legal heirs of plaintiff No.1, and therefore, they may be permitted to be brought on record as legal representatives of plaintiff No.1.

4. Petitioners/defendants opposed the said application, Trial Court has allowed it. Hence, the present petition.

5. Heard learned advocate for the petitioners and learned advocates for respective respondents. Perused the writ petition memo, annexures thereto, and impugned order.

6. Learned advocate for petitioners assailed the impugned order contending that the will is yet not to probated, and therefore legal representatives of plaintiff No.2 cannot claim to be legal representatives of plaintiff No.1. He submits that as per Section 213 of the Indian Succession Act, the impugned order could not have been passed.

7. Mr. Kakade, learned advocate for respondent Nos.2-A to 2-D, on the other hand, opposed the petition contending that, status of legal representatives of plaintiff No.2 is yet to be decided. Trial Court has rightly allowed the application Exhibit-127. No prejudice is likely to be caused to petitioners/defendant Nos.1 and 2, if legal representatives of plaintiff No.2 are brought on record, as legal representatives of plaintiff No.1. He threfore requests to dismiss the petition.

8. Mr. Jayabhar, learned advocate for respondents Nos.13, 14-A, 14-B, 16 and 17 supports the case of petitioners.

9. It appears from the record that legal representatives of plaintiff No.2 are claiming to be legal representatives of plaintiff No.1 on the basis of will executed by her in favour of plaintiff No.2. During the course of Trial, respondents will have to establish their case and prove the will, and this aspect will have to be considered by the Trial Court, after parties lead their respective evidence. In that view of the matter, at this stage, this Court is not inclined to interfere in the impugned order.

10. By keeping all the contentions of parties open, writ petition is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane