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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10183 OF 2022

Kamal Kishor Nandkishor Asopa
Age – 38 years, Occ – Agriculture
R/o Assopa Sadan, Kamdar Road
Latur

PETITIONER

VERSUS

1. Anant Rajgopal Asopa
Age – 38 years, Occ – Business

RESPONDENTS

2. Suresh Madanlal Asopa
Age – 55 years, Occ – Business

Both R/o Asopa Galli
Agrasen Bhavan, Latur

3. Sayyed Shabir Usmansab
Age – 68 years, Occ – Agriculture
R/o Girwalkar Nagar,
Barshi Road, Latur

4. Pandurang s/o Nagorao Kondamgire
Age – 57 years, Occ – Agriculture
R/o Yalamwadi, Taluka-Chakur
District - Latur

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Mr. Balbhim R. Kedar, Advocate for the petitioner

Mr. Amit S. Deshpande, Advocate for respondents No.1 and 2

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WITH
WRIT PETITION NO. 7698 OF 2022

Rameshchandra Govindal @ Govindram Asopa
Died Through LRs

PETITIONER

1. Anand Rajgopal Asopa
Age - 38 years, Occ – Agriculturist

2. Suresh Madanlal Asopa
Age – 55 years, Occ – Agirculturist

Both R/o Asopa Galli
Agrsen Bhawan, Latur
Taluka and District - Latur

VERSUS

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| <ol style="list-style-type: none">1. Kamalkishor Nandkishor Asopa
Age – 36 years, Occ – Business
R/o Kamdar Road, Latur
Taluka and District - Latur2. Ujwala Nares Asopa
Age – 55 years, Occ – Business
R/o Azad Chowk, Asopa Galli, Latur
Taluka and District – Latur3. Amol Chandrakant Zingade
Age – 52 years, Occ – Business
R/o Ram Galli, Latur
Taluka and District – Latur4. Ramakant Bhagvantrao Deshpande
Age – 57 years, Occ – Agriculturist
R/o Manjari, Taluka and District – Latur5. M/s Kaka Developers
Through its Partner
Narendra Devichand Agrawal
Age – 60 years, Occ – Agriculturist & Business
R/o Lokhand Galli, Latur
Taluka and District – Latur6. Gopal Shrikishan Mishra
Age – 59 years, Occ – Agriculture
R/o Palasa, Taluka – Hadgaon
District – Nanded7. Afjal Abdul Rauf Kureshi
Age – 56 years, Occu-Busienss
R/o Kureshi Mohalla, Latur
Taluka and District – Latur | <p>RESPONDENTS</p> |
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8. Bhagwat Ambadasrao Vade
Age – 69 years, Occ – Business
R/o More Nagar, Latur
Taluka and District - Latur

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Mr. Amit S. Deshpande, Advocate for the petitioners
Mr. Balbhim R. Kedar, Advocate for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JULY, 2023

ORDER :

1. Leave to correct prayer clause of writ petition No.10183 of 2022.
2. Since both these petitions raise similar question of law and fact, they were heard together and are being decided by this common order.
3. For the sake of convenience the parties shall be referred by their respective names.
4. Rameshchandra Asopa filed Regular Civil Suit No. 450 of 2016 against Kamalkishor Asopa and others for a declaration that the alleged will deed dated 29th April, 1994, executed in favour of Kamalkishor by Rawatmal is forged, antedated, fabricated, false, collusive, illegal and null and void and seeking perpetual injunction not to alienate the suit property and not to interfere his peaceful possession over the suit property.

Rameshchandra expired on 20th April, 2021. Anand s/o Rajgopal Asopa and Suresh Madanlal Asopa (respondents No.1 and 2 in Writ Petition No. 10183 of 2022) filed application Exhibit-48 in RCS No. 450 of 2016 praying for their substitution as legal representatives of Rameshchandra, contending that registered will deed was executed in their favour by Rameshchandra on 13th February, 2017. The said application was opposed by Kamalkishor, by filing detail say at Exhibit-51. The Trial Court allowed application Exhibit-48 and directed that Anand Rajgopal Asopa and Suresh Madanlal Asopa be brought on record as legal representatives of deceased plaintiff Rameshchandra. Kamalkishor, being aggrieved by this order has filed writ petition No. 10183 of 2022.

5. Kamalkishor Nandkishor Asopa filed Special Civil Suit No. 110 of 2020 against Rameschandra and others, for declaration that he is owner of the suit property, for setting aside compromise decree passed by the District Judge, Latur in Regular Civil Appeal No. 184 of 2002 to the extent of the suit property, for setting aside compromise decree in Regular Civil Suit No. 171 of 2020 passed by learned 2nd Joint Civil Judge, Junior Division, Latur and for setting aside sale deeds No.

2775/2012 dated 28th February, 2012, No.4581/2017 dated 28th November, 2017 and No. 4582/2017 dated 28th November, 2017. Suit property involved in both the suits i.e. Regular Civil Suit No.450 of 2016 and Special Civil Suit No.110 of 2020 is the same.

6. During pendency of Special Civil Suit No. 110 of 2020 Rameshchandra expired on 29th April, 2021, hence, Anand and Suresh filed application Exhibit-70 seeking their substitution claiming to be legal representatives of defendant No.1 – deceased Rameshchandra. The said application is rejected by the Trial Court by order dated 4th March, 2022. The said order is challenged in writ petition No. 7698 of 2022.

7. Heard learned advocates for the respective parties. Perused the memos of writ petitions, documents annexed along with the same and the orders impugned in both the petitions.

8. Mr. Kedar, learned advocate for petitioner Kamalkishor assailed order passed below Exhibit-48 in Regular Civil Suit No. 450 of 2016, on the ground that the said order is passed in clear violation of mandate of Rule 5 of Order 22 of the Civil Procedure Code. The inquiry contemplated in the said provision as to the status of the legal representatives, is not conducted and,

therefore, the order is unsustainable. He submits that considering the provisions of the Hindu Succession Act, Anand and Suresh cannot be said to be legal representatives of deceased Rameshchandra and ignoring this aspect, the impugned order is passed and, therefore, the same cannot be sustained.

9. Mr. Deshpande, learned advocate assailed the order dated 4th March, 2022 passed below Exhibit-70 in Special Civil Suit No. 110 of 2020 contending that there is total non application of mind on the part of the Trial Court in rejecting the prayer of the legal representatives to substitute them in place of deceased defendant Rameshchandra. He, however, fairly concedes that while passing the orders below Exhibit-48 in Regular Civil Suit No. 450 of 2016 and Exhibit-70 in Special Civil Suit No.110 of 2020, impugned in these petitions, both the Courts have failed to follow the mandate of Rule 5 of Order 22 of the Civil Procedure Code.

10. Mr. Kedar, learned advocate submits that the Trial Court has erred in considering the fact that in Regular Civil Appeal No.24 of 2017, respondents Anand and Suresh are brought on record as legal representatives of deceased Rameshchandra and this fact weighed with the learned Trial Court while allowing the

application Exhibit-48, however, it is ignored that the petitioner Kamalkishor is not a party to that appeal and, therefore, that aspect ought to have been ignored by the Trial Court. In support of his submissions, he has placed reliance on the order passed by this Court in Writ petition No. 9865 of 2016, wherein it is observed that *"Even if such decree is given by the Trial Court, it will not be binding on the person, who is not party to such suit."*

11. It is evident from the record that while passing the orders impugned in both these petitions, the Trial Courts have failed to follow the mandate of Rule 5 of Order 22 of the Civil Procedure Code, the impugned orders in these petitions, therefore, cannot be sustained.

12. The contention of the learned advocate Mr. Kedar that the Trial Court has taken into consideration the fact that in Regular Civil Appeal No. 24 of 2017 Anand and Suresh are brought on record as legal representatives of deceased Rameshchandra, while allowing application Exhibit-48, but Kamalkishor is not party to that appeal and this aspect ought to have been considered by the Trial Court, shall be taken into consideration at the time of decision on application Exhibit-48.

13. Considering the fact that parties are litigating against each

other in Regular Civil Suit No. 450 of 2016 and Special Civil Suit No.110 of 2020 which are pending before different courts i.e. Regular Civil Suit No. 450 of 2016 is pending before 3rd Joint Civil Judge, Junior Division, Latur and Special Civil Suit No. 110 of 2020 is pending before 4th Joint Civil Judge, Senior Division, Latur and in view of the nature of dispute between the parties, this Court is of the view that both the suits need to be clubbed together and are required be decided by one and the same court, so as to avoid different verdicts in similar facts.

14. In the result, following order -

ORDER

- A. Order dated 29th June, 2022 passed by 3rd Joint Civil Judge, Junior Division, Latur below Exhibit-48 in Regular Civil Suit No. 450 of 2016 is hereby quashed and set aside and the matter is remanded to the Trial Court for decision afresh.
- B. Order dated 4th March, 2022 passed by 4th Joint Civil Judge, Senior Division, Latur below Exhibit-70 in Special Civil Suit No. 110 of 2020 is quashed and set aside and the matter is remanded to the Trial Court for decision afresh.

- C. Regular Civil Suit No. 450 of 2016 and Special Civil Suit No. 110 of 2020 are clubbed together and are directed to be placed before learned Civil Judge Senior Division, Latur.
- D. Learned Civil Judge, Senior Division, Latur shall decide application Exhibit-48 in Regular Civil Suit No. 450 of 2016 and Exhibit-70 in Special Civil Suit No. 110 of 2020, by following the procedure contemplated in Rule 5 of Order 22 of the Civil Procedure Code, within a period of 8 weeks from the date of receipt of writ of this order.
- E. Learned 4th Joint Civil Judge, Senior Division, Latur shall record separate evidence in both the suits and shall decide them simultaneously.
- F. Both the writ petitions are disposed of.

[NITIN B. SURYAWANSHI]
JUDGE