

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12983 OF 2023

**RAMESH NARAYAN KHOD
VERSUS
NARAYAN BHAU KHOD DIED AND OTHERS**

...
Advocate for Petitioner : Mr. Aute Janabai Sonaji

...
CORAM : S.G. MEHARE, J.

DATED : OCTOBER 18, 2023

PER COURT:-

1. Heard learned counsel for the petitioner.
2. The plaintiff had filed a suit for declaration that the sale deed executed by deceased defendant no.1 in favour of defendant no.2 does not bind his share and for injunction. During the suit, defendant no.1 died. Respondent no.3 applied under Order 22 Rule 10 of the Civil Procedure Code to allow him to represent the suit as the deceased defendant no.1 had adopted him and executed a Will in his favour. He contended that since he was the adopted son and acquired the title by way of Will in his favour, he is the legal representative of deceased defendant no.1. Therefore, he deserves to be taken on record under Order 22 Rule 10 of the Civil Procedure Code.
3. The learned trial Court considered the facts and allowed the application by order dated 06.07.2023.

4. Learned counsel for the petitioner would submit that respondent no.3 was not the party to the suit. The petitioner had obtained the legal heir certificate under the Bombay Regulation Act. Respondent no.3 never objected to the legal heirship of the plaintiff. Hence, he cannot claim a right over the properties involved in the suit.

5. The legal representative and legal heir are two different concepts. It is not necessary that the legal representative shall be the legal heir. But, the legal heir may be a legal representative. Respondent no.3 has a specific claim that he was a adopted son of the deceased defendant no.1 and he has acquired the title in the suit land by way of Will executed by the deceased in his favour. In such circumstances, rights to represent the properties of deceased defendant no.1 accrued in his favour and he is entitled to contest the suit as legal representative of deceased defendant no.1.

6. The learned 5th Joint Civil Judge Junior Division, Beed, has correctly appreciated the facts and the provisions of Order 22 Rule 10 of the Civil Procedure Code.

7. There is nothing illegal in the impugned order. Hence, the petition stands dismissed at the admission stage.

(S.G. MEHARE, J.)