

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO.3790 OF 2019
WITH
CIVIL APPLICATION NO.2133 OF 2021
IN WRIT PETITION NO.3790 OF 2019

SMT. VIJAYA MADHAVRAO KASBE
VERSUS
NANDABAI DHANNU SALAMPURE DECEASED THR LRS
RUPCHAND DHANNU SALAMPURE AND OTHERS

Mr. Kuldeep Patil h/f. Mr. S.S. Choudhary, Advocate for the
Petitioner.
Mr. G.K.Naik-Thigale, Advocate for the Respondent No.12 in Writ
Petition No.3790/2019.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : FEBRUARY 09, 2023.

PER COURT :

1. Heard.
2. In the petition, civil application has been preferred for bringing on record the legal heirs of deceased-Respondent no.10, however, considering that the contesting party is the Respondent no.12, both parties agree that the petition be taken up for hearing.
3. The petition takes an exception to the order dated 15th June, 2018, passed by the Appellate Court in RCA No.521 of 2012 whereby the respondent No.12's application for bringing on record

the legal heirs came to be allowed.

4. Special Suit No.647 of 1996 was instituted by the original plaintiff against the defendant/s for partition and separate possession in respect of the property belonging to the plaintiff's mother, which came to be decreed as against which RCA No.521 of 2012 came to be instituted by the petitioner, who is a subsequent purchaser of the property. During the pendency of the Appeal, the original plaintiff-Dagdubai expired and respondent No.12 filed an application for being impleaded as party being the son of the original plaintiff i.e. deceased Dagdubai.

5. Heard learned counsel appearing for the parties.

6. Learned counsel appearing for the petitioner submits that in support of his application for being brought on record as the legal heir of the deceased-Dagdubai, the respondent No.12 has not produced any legal heirship certificate. He would further submit that the application has been allowed without issuing notice to the petitioner and his say was not obtained.

7. Per contra, learned counsel for respondent No.12 supports the impugned order and submits that the provisions of Order 22 of the Code of Civil Procedure, 1908, do not mandate any requirement of furnishing legal heirship certificate for being brought on record as legal representative of deceased party.

8. The suit is admittedly between the original plaintiff and her sisters in which the petitioners who are the subsequent purchasers have been impleaded. The Respondent No 12 sought impleadment claiming to be son of the deceased plaintiff, which has not been objected by the other Defendants, who are the family members of Dagdubai and as such will have knowledge about the legal heirs of Dagdubai. No objection has been taken by the family members, and it is the petitioner, who is stranger to the family, has raised this objection. The provisions of Order 22 of the CPC permit a legal representative to be brought on record, in event of death of the parties to the proceedings. The provisions of the Code of Civil Procedure do not mandate the requirement of the legal heirship certificate before an application for being impleaded as a legal representative is made. In event, in case of the serious dispute as to the character of legal representative an enquiry is contemplated under the provisions of Order 22 Rule 5 of the Code. However, in the present case, in my opinion, considering the nature of objection which has been raised, it is apparent that an attempt is being made to protract the proceedings and as such, there is no merit in the submissions of the learned counsel for the petitioner.

9. For the reasons above, I do not find any infirmity in the impugned order dated 15th June, 2018, permitting the Respondent No.12 to be impleaded as a legal representative of the deceased- Dagdubai.

10. Writ Petition stands dismissed. In view of the disposal of the writ petition, civil application does not survive and stands disposed of.

(SHARMILA U. DESHMUKH, J.)