

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

WRIT PETITION NO.14354 OF 2018

**TRIVENIBAI DYANOBA HUMBE
VERSUS
MUKUND TUKARAM HUMBE AND OTHERS**

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Advocate for Petitioner : Mr. Vilas M. Humbe
Advocate for Respondent Nos.2, 5 to 8, 10 to 14 : Mr. M.L. Kolhe
Advocate for Respondent Nos.1, 3 and 4 : Mr. A.S. Deshmukh

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 19th JULY, 2023

PER COURT :

1. Petitioner is aggrieved by the order dated 19/11/2018, passed by learned Civil Judge, Senior Division, Bhoom, below Exhibit-100 in Special Civil Suit No.11/2017.
2. Since facts in the present matter are admitted, it is not necessary to go into the same.
3. Heard learned advocate for petitioner, learned advocate for respondent Nos. 2, 5 to 8, 10 to 14 and learned advocate for respondent Nos.1, 3 and 4. Perused the writ petition memo, annexures thereto and the impugned order.
4. Petitioner moved application Exhibit-100 in Special Civil Suit No.11/2017, filed by respondent No.1/original plaintiff against other respondents/original defendants, for partition and separate possession of the suit property and for declaration that the sale deeds executed by defendants are not binding on the share of the plaintiff. In the suit, defendant No.14 was Dnyandeo Govind

Humbe, who was husband of the present petitioner. On his death, during the pendency of suit, application Exhibit-100 was moved by the petitioner claiming that she being necessary party, may be added as party defendant in the suit. The said application is rejected by the trial Court holding that in the suit filed by Mukund son of Tukaram Humbe seeking partition of the property of his father Tukaram Dyanoba Humbe, petitioner is not necessary party as the plaintiff has claimed that the suit properties are fallen to his share in the partition done by his father in the year 1985.

5. Be that as it may. Son of the petitioner Tukaram is already on record. Since husband of the petitioner was party i.e. defendant No.14 in the suit, petitioner ought to have moved trial Court seeking her impleadment as legal heir of her husband Dyanoba, on account of his death. Petitioner being legal heir is required to be brought on record.

6. In that view of the matter, writ petition is allowed. Impugned order dated 19/11/2018, passed below Exhibit-100 in Special Civil Suit No.11/2017, is quashed and set aside. Petitioner is directed to be brought on record as legal heir of deceased Dyanoba – original defendant No.14.

(NITIN B. SURYAWANSHI, J.)