

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2268 OF 2023

Swapnil Nitinand Bansode

.. Petitioner

Versus

Yashoda Ananda Bansode and Ors.

.. Respondents

-
- Mr. Nikhil Wadikar a/w. Mr. Pradip Zende, Mr. Malhar Pawar i/by
Mr. Nandu Pawar, Advocate for Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 01, 2023.

P.C.:

- 1.** Heard Mr. Wadikar, learned Advocate for the Petitioner.
- 2.** Perused the impugned order dated 07.11.2022 passed below Exhibit-147 in Special Civil Suit No.229 of 2012 by the learned Trial Court.
- 3.** Application below Exhibit-147 was filed by Swapnil Nitinand Bansode, a minor through his natural guardian i.e. mother Swati Nitinand Bansode for impleadment in the Civil Suit. The said Application has been rejected by the learned Trial Court on the ground that the said Application is pre-mature and not tenable.
- 4.** Briefly stated the Applicant below Exhibit-147 is the grandson of original Plaintiff Ananda Bandu Bansode. The Plaintiff has expired on 05.07.2012 during the pendency of the suit. Prior to his

demise, Plaintiff had executed a registered Will on 21.08.2009 by virtue of which the Applicant was bequeathed the estate of the Plaintiff as his legatee.

5. Mr. Wadikar would submit that in fact under the Will of the original Plaintiff, Applicant i.e. Petitioner herein along with his cousin brother Saurabh Bansode, son of Bhiku Bansode are equally bequeathed the estate of Ananda Bandu Bansode. In that view of the matter, Application was filed below Exhibit-147 seeking impleadment as a proper and necessary party. Application was opposed before the learned Trial Court by the other legal heirs of Ananda Bansode. Though one of the reason stated in the impugned order is that the similar Applications had earlier been filed by the Applicant at Exhibit-73 and Exhibit-84 and the same were subsequently withdrawn and not pressed. That reason however cannot come in the way of filing Application below Exhibit-147 nor can it be held against the Petitioner. What is important to note that it is an admitted position that Petitioner is the grandson of Ananda Bandu Bansode and there is no dispute about that. Though he claims his right as a legatee on the basis of Will dated 21.08.2009, that right can only be established by him subject to a trial. Petitioner cannot be shut out merely on the objection raised by the other legal heirs who are daughters of the deceased original Plaintiff.

6. In so far as the status of the property is concerned, that also is the subject matter of the suit and be that as it may, the learned Trial Court is entitled to frame an issue with respect to the same at the trial.

7. In view of the above, the impugned order dated 07.11.2022 needs to be interfered with. It is not sustainable and the same is therefore quashed and set aside. Application below Exhibit-147 stands allowed.

8. Trial Court is directed to implead Petitioner as a proper and necessary party in Special Civil Suit No.229 of 2012.

9. At the request of Mr. Wadikar, considering that the suit is of the year 2009, the learned Trial Court is requested by this Court to dispose of Special Civil Suit No.229 of 2012 as expeditiously as possible and preferably within a period of 12 months from today.

10. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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