

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9575 OF 2019

Rajaram Hari Padmai (Decd) through
LHR

..... Petitioner

Vs.

Smt Krushnabai Bhra. Hari Padmai (Died)
and Ors.

..... Respondents

Mr. Sandeep S. Koregave for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 3rd JULY 2023.

P. C.

1. Heard.

2. Questioning the common order dated 15/2/2019 passed by C.J. Jr. Division in the application filed below Exhibit 118 and 124 seeking to be impleaded as party, the present petitioner is before this Court.

3. Application below Exhibit 118 was filed by the applicant seeking to be impleaded in place of the original plaintiff No.1 Krushnabai Hari Padmai who expired on 2/2/1995 during the pendency of the proceedings. The applicant sought impleadment

on the ground that there is registered will in favour of the applicant wherein her share has been decreed to the applicant and therefore they had right to proceed in place of deceased original plaintiff No.1. Application at Exhibit 124 was filed on the same grounds contending that they had become legal owners and possessors of the share of deceased- original plaintiff No.1 and that they be permitted to proceed with the suit by deleting the name of deceased plaintiff No.1-Krushnabai Hari Padmai, in other words, as the original plaintiffs.

4. Learned counsel appearing for the petitioner submits that the Will has not been probated and as such no right accrues to the applicant to seek impleadment. He seeks to rely on the decision of the Apex Court in ***Suresh Kumar Bansal vs. Krishna Bansal and Anr., (2010) 2 Supreme Court Cases 162*** and would urge that applicant must be impleaded in said suit subject to grant of probate of Will in favour of the applicant.

5. The applicants in R.C.S. No.143/1986 had filed two applications viz., Exhibit 118 which was filed on 24/3/1995 and

the second application was filed on 6/4/1995. These applications surprisingly have been disposed of in the year 2019 by the common order. The reason for delay in disposing of the applications is not demonstrated. Be that as it may. The case of the applicants seeking impleadment is on the ground that the registered Will has been executed in their favour by the deceased original plaintiff No.1. On the basis of the Will, applicants claim to have share in the suit properties of which partition and separate possession is sought. The purpose of Order 1 Rule 10 of CPC is to bring before the Court at one and same time all persons interested in the dispute so that all the issues may be finally determined and to avoid multiplicity of the proceedings. It is also settled position that party who claims to have interest in the subject matter is required to be impleaded as party.

6. Considering the above, there is no infirmity in the impugned order. Whether the Will in question is a forged Will or whether any right accrues to the applicant is a matter of trial. Section 213 of the Indian Succession Act creates a bar to the establishment of any right as a executor or legatee unless probate

has been obtained of the Will under which right is claimed.

7. Considering the said position, in my opinion the rights of the parties seeking impleadment will be considered after adjudication. In the decision of *Suresh Kumar Bansal (supra)* relied upon by the petitioner, the application seeking impleadment was allowed with a rider that if the probate of the deceased plaintiff is not granted, it is needless to say that the natural heirs and legal representative of the deceased plaintiff would only be entitled to get possession on the basis of inheritance of the suit property. This position is already in the statute book by virtue of section 213 of the Indian Succession Act.

8. In light of the above, no interference is warranted in the exercise of power under section 227 of the Constitution of India.

9. The writ petition stands dismissed.

SHARMILA U. DESHMUKH, J.