

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 9979 OF 2019**

Yashwant @ Yasaba Krishna Kamble

(since deceased), through Lrs.

.....Petitioners

V/s.

Koyana Vithu Kamble (since decd.) thr

Lrs. And anr.

.....Respondents

Mr. Vishwanath B.Rajure, Advocate for the petitioner.

CORAM : SANDEEP V. MARNE, J.

DATE : 4th MAY, 2023.

P.C. :

1) The petitioner challenges the order dated 05.04.2019 passed by the 7th Joint Civil Judge, Senior Division, Kolhapur passed on application at Exhibit-203. The application at Exhibit-203 was filed by the Judgment Debtor seeking a prayer that till Bali Lingappa Kamble proves his heirship, the proceedings of Darkhast should be kept in abeyance. In support of his contention, the Judgment Debtor relied upon direction no.3 of the order dated 22.11.2018 passed on application for bringing the legal representatives on record. In that direction, the Executing Court clarified that "Legality of

heirs of deceased persons having relation with deceased or not is the point which is kept open in case and not decided in this application”.

2) By the order impugned in the present petition, the Executing Court has proceeded to reject the application filed by the Judgment Debtor holding that Bali Lingappa Kamble has been brought on record as a legal representative of deceased, Koyana.

3) Mr. Rajure, the learned Counsel appearing for the petitioner submits that there is difference between legal heirs and legal representatives. He would submit that the Judgment Debtor would have no objection to the order of the Executing Court bringing legal representatives of deceased, Koyana on record. He would further submit that, while bringing the legal representatives of deceased Koyana on record, by the order dated 22.11.2018, the Executing Court had clarified that the issue of legality of heirship of the legal representatives has not been decided and the same has been kept open. He would submit that the findings recorded by the Executing Court in the order dated 5.04.2019 may be construed to mean as if the Executing Court has held Bali Lingappa Kamble to be the legal heir of deceased, Koyana.

4) Having perused the impugned order dated 5.04.2019, I do not find that the Executing Court, has in any manner, decided the issue of heirship of Bali Lingappa Kamble. All that the Executing Court has observed is that Bali Lingappa

Kamble has been brought on record as legal representative of deceased, Koyana. In this regard, the finding recorded by the Executing Court in para-11 of the order dated 05.04.2019 reads thus :

“11. In the present case, deceased Koyana executed Will in favour of Bali Lingappa Kamble. So in the capacity of legatee Bali Lingappa Kamble represents estate of deceased Koyana. So he is legal representative of deceased D.H. Koayana a per Section 2(11) of Code of Civil Procedure, 1908. After death of Bali Lingappa Kamble, his legal heirs are legal representative of deceased D.H.Koyana, as per section 2(11) of the Code of Civil Procedure, 1908. Therefore, the objection raised in this application is not tenable. Hence, in the result, I pass the following order :

Order

Application is rejected.”

5) Thus, the Executing Court has not decided the issue as to whether Bali Lingappa Kamble is entitled to succeed to the estate of deceased, Koyana. The Executing Court has already kept the said issue open by its order dated 22.11.2018. The petition filed by the petitioner is thus devoid of merits. The same is dismissed with no orders as to costs.

(SANDEEP V. MARNE, J.)