

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

WRIT PETITION NO.1648 OF 2023

Ashok Govind Dharmadhikari and Anr. Petitioners

Vs.

Smt. Suman Suresh Dharmadhikari (Decd.
with no heirs) and Ors. Respondents

Mr. N. V. Bandiwadekar i/b Ashwini Bandiwadekar for the
Petitioners.

Mr. Sandeep Koregave for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 11 JULY 2023.

P. C.

1. Heard Mr. N. V. Bandiwadekar for the petitioners and

Mr. Sandeep Koregave for the respondents.

2. The petitioner takes an exception to the order dated
4/7/2022 passed by the Joint Civil Judge, Senior Division,
Kolhapur permitting impleadment of respondent No.3-original
applicant.

3. Learned senior counsel for the petitioner contends that
the suit in question was instituted by the wife of the predecessor in

title challenging sale deed executed by the husband of original plaintiff in favour of the present petitioner. He would further submit that during pendency of the suit original plaintiff expired and the applicant on the basis of registered Will filed an application to be impleaded as plaintiff under the provisions of Order 22 Rule 4 of C.P.C. He would further contend that the applicant is not a family member of the deceased plaintiff and as such will have to prove his right by obtaining probate to the Will claimed to have been executed in his favour. He would further submit that there is no objection to the applicant being impleaded as party however unless Will is proved no rights will accrue to the plaintiff.

4. Perused the impugned order. By the impugned order the trial Court permitted impleadment of the plaintiff by relying on the Will which is stated to have been executed in favour of deceased plaintiff. It would be pertinent to note that the trial Court while allowing the application has specifically noted in paragraph No.10 as under :

"Undoubtedly, even if the applicant is impleaded as a plaintiff in the case the fate of the suit will depend upon

proving the alleged Will for which the burden will be obviously lying upon the applicant as per law."

5. Learned senior counsel has invited attention of this Court to the decision which has been referred to paragraph No.9 of the impugned order and would submit that the said decision lays down that the Will being made at Kolhapur, said place not falling within the ordinary civil jurisdiction of Bombay, claim of petitioner under Will without obtaining any probate is legal. The said decision was rendered by considering the provisions of section 57 of the Indian Succession Act, 1925.

6. In my opinion, it is not necessary for this Court to go into the question as to whether the provisions under section 57 of the Indian Succession Act will apply to the facts of the present case for the reason that the trial Court has specifically held that the fate of the suit will depend upon proving the alleged Will.

7. In my opinion, trial Court has permitted impleadment of the applicant as plaintiff with a caveat that the fate

of the suit will depend upon proving the alleged Will. In that view of the matter, there is no cause for interference in the impugned order.

8. The writ petition dismissed.

SHARMILA U. DESHMUKH, J.