

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1013 OF 2020

Kishore Shamjibhai Mehta .Vs. Smt. Wajiben Wd/o Shamjibhai Mehta (Dead) & ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.O. Ahmed, Advocate for the petitioner.

Shri M.A. Deo, Advocate for the respondent No.11.

CORAM : ANIL S. KILOR, J.

DATED : 05/04/2023

1. Heard.
2. The order below Exh.352 dated 28.11.2019 passed by the 2nd Jt. Civil Judge (Jr. Dn.), Yavatmal allowing the application filed by the respondent No.11 under Order 1 Rule 10 of the Code of Civil Procedure (for short "C.P.C."), is under challenge in this writ petition.
3. The petitioner filed a suit for partition and separate possession. In the said suit, the property in question i.e. property Block No.E-3/23 was not the subject matter of the suit but it was added by way of an amendment on 26.07.2019.
4. The respondent No.11 by way of an application Exh.352 filed under Order 1 Rule 10 of the C.P.C. prays for her impleadment as defendant No.14 on the ground that the original defendant No. 4 executed the Will in her

favour, of the property in question i.e. Block No. E-3/23, vide Will dated 11.02.2016.

5. Undisputedly, on 14.05.2016 the original defendant No.4 died and in view of the Will executed in favour of the respondent No.11, the said property was devolved upon the respondent No.11. The said property was sought to be added first time in the suit by moving an application on 10.06.2019 which was allowed on 26.07.2019.

6. Thus, admittedly, there was no devolution of the property in question in favour of the respondent No.11 after the said property was added by way of amendment to the suit on 26.07.2019 but it was devolved much before such amendment was carried out.

7. In the circumstances, the submissions of the learned counsel for the petitioner that the respondent No.11 ought to have applied under Order 22 Rule 10 of the C.P.C., cannot be accepted even *lis pendens* will not apply in this case. Accordingly, I do not find any error committed by the learned trial Court in allowing the application.

Hence, the writ petition is **dismissed**.

JUDGE