



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5560 OF 2024

PURUSHOTTAM SHANKAR GHODGAONKAR DIED THROUGH LRS SUNIL
PURUSHOTTAM GHODGAONKAR AND OTHERS

VERSUS

GAJANAN SHANKAR GHODGAONKAR DIED THROUGH LRS PRABHA
GAJANAN GHADGAONKAR AND OTHERS

AND

9 WRIT PETITION NO. 5561 OF 2024

PURUSHOTTAM SHANKAR GHODGAONKAR DIED THROUGH LRS SUNIL
PURUSHOTTAM GHODGAOKAR AND OTHERS

VERSUS

GAJANAN SHANKAR GHODGAONKAR DIED THROUGH LRS PRABHA
GAJANAN GHADGAONKAR AND OTHERS

Mr. S. B. Yawalkar, Advocate for the petitioners

Mr. S. D. Joshi, Advocate for respondent Nos.1 to 4.

CORAM : R. M. JOSHI, J.

DATE : 8th JULY, 2024

PER COURT :-

1. Both petitions take exception to the order passed by Civil Judge, Junior Division, Chopda, Dist. Jalgaon in Regular Darkhast No. 05/2021 whereby application (Exhibit 28) for bringing LR's of deceased Purushottam Shankar Ghodgaonkar is allowed whereas application (Exhibit 35) is allowed to bring LR's of deceased Gajanan Shankar Ghodgaonkar.

2. The facts which led to the filing of present petitions, can be narrated in brief as under:

(i) Gajanan filed Special Civil Suit No. 54/1993 for partition and separate possession of the joint Hindu Family properties and business against Purushottam and others. The said suit came to decreed with grant of 6/15 shares to Gajanan and Purushottam and others and ½ share in house and business. Purushottam filed Regular Civil Appeal No. 24/2013 challenging judgment and decree dated 30th March, 2013 passed in R.C.S. No. 167/2000. Gajanan filed application (Exhibit 100) under Section 151 of Code of Civil Procedure making averments that Purushottam being in possession of the properties and business and therefore maintenance is claimed from Purushottam. This application was allowed by order dated 29th April, 2017. This order came to be challenged unsuccessfully by Purushottam. Thereafter First Appellate Court allowed RCA No. 24/2013 whereby the judgment and decree challenged was set aside and the suit was remitted back to the Trial Court for decision afresh.

(ii) In the year 2021 Gajanan filed Regular Darkhast No. 05/2021 for seeking recovery of the amount of maintenance directed as per order passed below Exhibit 100 in RCA No. 24/2013. On 22nd September, 2021 Purushottam died. An application came to be filed vide Exhibit 28 to

bring LR's of deceased Purushottam, with the averments that right to sue survives against his legal representatives and that they are already party to the Appeal and Darkhast. On 10th August, 2023 Gajanan also died. His LR's sought themselves to be brought on record. Both applications were allowed. Hence these petitions.

3. Learned counsel for the petitioners submits that the order passed by the First Appellate Court was against appellant i.e. Purushottam only in his individual capacity, directing him to pay maintenance to Gajanan. Though petitioners were also party to the said appeal, no directions were issued in that regard against them. It is thus his submission that the order passed against Purushottam being personal in nature cannot be executed through his LR's. To support his submission he placed reliance on the judgment in case of ***Jayshree Alais Pushpa Satyendra Jindam (dead) By Lrs. V. Satyendra Shivram Jindam, AIROnline 2023 BOM 1489.***

4. Learned counsel for the respondents opposed the said contention by drawing attention of the Court to the nature of order passed by the First Appellate Court whereby the maintenance was granted on the basis of the fact that Purushottam is enjoying the fruits of joint family properties as well as business. Thus, according to him, since the petitioners being the legal representatives of deceased Purushottam

and entitle to inherit his properties, the execution proceedings against them are tenable.

5. In the instance case though an order was passed by the First Appellate Court directing payment of maintenance by Purushottam to Gajanan, however, such maintenance was not directed pursuant to any legal/statutory obligation on the part of Purushottam to maintain Gajanan. Specific order has been passed with specific finding that the joint family properties and business are held by Purushottam and for this reason the order came to be passed. Thus, this order is not independent to the properties held by deceased. This order passed below Exhibit 100 is maintained by this Court in Writ Petition No. 11316/2017. Thus, as far as that order is concerned, the same has attained finality. There is no dispute about the fact that petitioner would inherit properties of deceased Purushottam.

6. Now question arises as to whether merely because the petitioners were party to the appeal and no order was passed against them, they cannot be subjected to the execution of the order in question. As held earlier the order of maintenance was granted for the reason that deceased Purushottam was holding the joint family properties and business and on that count he was directed to maintain Gajanan. There is no dispute about the fact the petitioners are legal representatives of

deceased Purushottam. It could be the matter to be decided during the execution proceeding as to whether any properties are inherited by them from Purushottam in order to make them liable for the payment of maintenance to Gajanan or his LR's. At this stage this Court is not required to take into consideration to the said aspect as it would for the execution Court to decide the same, if such issue is raised. Suffice it to say that the petitioners are legal representatives of deceased Purushottam and entitle to inherit his assests hence the tenability of execution proceeding against them for recovery of the maintenance amount due and payable to Gajanan during his life time cannot be challenged.

7. In so far as the LR's of Gajanan are concerned, the Gajanan was directed to be paid maintenance by Purushottam and whatever amount was due to him during his life time is right accrued and inheritable by his LR's. *Prima facie*, right to sue survives in their favour against LR's of Purushottam. In these circumstances, this Court finds no reason or justification to cause interference in the impugned orders.

8. Petitions stand dismissed. Needles to say that all contentions of rival parties are kept open.

(R. M. JOSHI, J.)

ssp