



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12199 OF 2024

Santosh Jagannath Gotral

VERSUS

Naserkhan Ibrahimkhan Is Died Through Lrs Sofiya Begum
Naserkhan And Others

• Mr. B. K. Dale, Advocate for the Petitioner

CORAM : R.M. JOSHI, J

DATE : NOVEMBER 13, 2024

PER COURT :

1. This Petition takes exception to order dated 21.06.2024 passed below Exh. 181 in R.D. No. 11/2008 whereby LR's of decree holder no. 2 are permitted to be brought on record.

2. Learned Counsel for the Petitioner who is obstructionist to the execution proceedings submits that earlier application Exh. 170 came to be filed to bring LR's of decree holder no. 2 on record, however, the said application was not pressed. This, according to him, amounts to rejection of application and that LR's of deceased are now precluded from making applications to bring themselves on record.

3. Perusal of the record indicates that though such submissions are made, there is no dispute raised by the Petitioner with regard to the fact that the persons who are allowed to be joined as party to the execution proceedings are legal heirs of the decree holder no. 2. It is within the rights of the LR's of decree holder no. 2 who died in the year 2018 to become party to the executing proceedings as they have a right in the suit property.

4. In so far as issue about previous application (Exh. 170) being not pressed is concerned, principle of res judicata would not apply to the case as there is no decision on the said application on merit by competent Court. Moreover, principle of estoppel too has no application herein.

5. Having regard to the aforestated facts, in exercise of Writ Jurisdiction for want of perversity in the findings recorded by the Executing Court, no interference is called for in the impugned order. In the result, Petition stands dismissed.

(R.M. JOSHI, J.)