

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3151 OF 2024

Mangesh Nilkanth Buddhe

.. Petitioner

Versus

Mahesh Nilkanth Buddhe & Ors.

.. Respondents

.....

- Mr. Yuvraj Narvankar for Petitioner
- Mr. Rugwed Kinkar for Respondent No. 1
- Mr. Drupad Patil for Respondent Nos. 2 & 3

.....

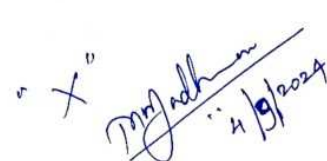
CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 4, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 04.09.2024.
3. Heard Mr. Narvankar, learned Advocate for Petitioner; Mr. Kinkar, learned Advocate for Respondent No. 1 and Mr. Patil, learned Advocate for Respondent Nos. 2 and 3.
4. Parties have filed Minutes of Order dated 03.09.2024 which are signed by learned Advocates appearing for the parties. I have perused the Minutes of Order and on reading the same, it is seen that there can be no impediment in taking the said Minutes of Order on record for disposal of the present Writ Petition. Minutes of order is running into two pages. They are taken on record and marked "X" for

identification. For the purpose of reference and convenience, they are scanned and reproduced below:-



**IN THE HIGH COURT OF JUDICATURE
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 3151 OF 2024**

Mangesh Nilkanth Buddhhe ...Petitioner

Versus

Mahesh Nilkanth Buddhhe and Ors. ...Respondents

- Mr. Yuvraj Narvankar for Petitioner
- Mr. Drupad S Patil a/w Adv. Rugved R Kinkar for Respondent No. 1
- Mr. Dheeraj Patil for Respondent No. 2 and 3

CORAM: MILIND N. JADHAV J

DATE: SEPTEMBER 3, 2024

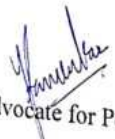
MINUTES OF ORDER

1. The Petitioner is original Defendant No.1 and the Respondents are Defendant Nos. 2 to 4 in Special Civil Suit No. 93 of 2015 filed by Nilkanth Maruti Buddhhe (now deceased) for partition and separate possession of suit property.
2. The original plaintiff, Mr Nilkanth Buddhhe died on 15.06.2023 leaving behind Petitioner and Respondents as his legal heirs. After his death, the Respondent No. 1 herein (Mahesh Nilkanth Buddhhe) filed an application at Exhibit 110 seeking to transpose himself as the plaintiff claiming to be the sole legatee under the Will dated 8.09.2015. The said transposition and existence of the Will was challenged by the petitioner by filing the reply to the said application.

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3. By the impugned Order dated 27.11.2023 Learned Civil Judge Sr. Division, Kolhapur has allowed the said Application filed below Exhibit 110 and has allowed the transposition as prayed.
4. The petitioner (Original Defendant No.1) has filed the present petition impugning the said order dated 27.11.2023.
5. The petitioner herein has disputed the said Will dated 8.09.2015 and also the right of the respondent no 1 to continue the pending proceedings in place and stead of the deceased plaintiff.
6. It is a common ground that in any proceedings for partition, each party is in the carriage of the proceeding and therefore the impugned order can be sustained by expressly keeping the issue of legality and validity of the Will open for adjudication. The impugned order shall not be construed to confer any exclusive right on the respondent no 1 by virtue of the Will or impugned transposition.
7. All contentions of parties on merits are expressly kept open.
8. With above observations, the impugned order dated 27.11.2023 is sustained subject to above observations and clarifications. The present Writ Petition is disposed of in the aforesaid terms. There shall be no order as to costs.


Advocate for Petitioner


Advocate for Respondent NO.1


Advocate for Respondent Nos. 2 and 3

5. The obligations and undertakings recorded in the Minutes of Order are accepted as undertaking given to this Court and the parties shall abide by the same.
6. Order in terms of the Minutes of Order.
7. Considering the fact that Suit is of the year 2015, Learned Trial Court is directed to decide Special Civil Suit No. 93/2015 as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law and after allowing both the parties to lead their respective evidence. Parties shall co-operate with the Trial Court and shall not seek unnecessary adjournment unless it is absolutely necessary in case of any urgency or emergency.
8. Learned Trial Court shall not be influenced by any of the observations made in the impugned orders as well as this order while deciding the Suit proceedings.
9. All contentions of the parties are expressly kept open.
10. In view of the above, Writ Petition stands disposed.