

Ajay

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

WRIT PETITION NO. 13034 OF 2022

Mahadev Bapu Karpe

Petitioner (Orig.
.. Defendant No.1)

Versus

~~Laxmibai Bapu Karape~~
(Deceased Through LRs)
Lilabai Jyotiram Mulik and Ors.

.. Respondents

-
- Mr. D.V. Sutar a/w. Mr. Kiran Kulkarni and Mr. Deepak Jain,
Advocates for Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 05, 2024.

P.C.:

- 1.** Heard Mr. Sutar, learned Advocate for Petitioner.
- 2.** The present Writ Petition takes exception to the order dated 27.04.2022 passed by the learned Trial Court in Application filed below Exhibit “118” by the Writ Petitioner – Defendant No.1 in Regular Civil Suit No.48 of 2010.
- 3.** Mr. Sutar would submit that Regular Civil Suit No.48 of 2010 has been filed for effecting partition of six properties which are ancestral properties. He would submit that Defendant No.6 in the said Suit is one Smt. Indubai Kadam. He would submit that this original Defendant No.6 expired in the year 2017 and the Application of the legal heirs of Indubai Kadam for impleadment is pending before the

Trial Court. That Application is appended at page No.57 of the Writ Petition. He would submit that after Indubai's demise, by virtue of her registered Will dated 30.01.2017, Writ Petitioner – Defendant No.1 who is the sole beneficiary under the said Will has made the Application for his impleadment in place of Indubai in the partition Suit being the legal heir by virtue of the said Will and by operation of law. He would submit that the learned Trial Court has by the impugned order rejected the Application of the Writ Petitioner – Defendant No.1 seeking his impleadment on the ground that is enumerated in paragraph No.8 of the said order. I have perused the said order.

4. The learned Trial Court holds that the Writ Petitioner's right is independently available to him to seek an appropriate declaration that he is the heir of Indubai Kadam according to her Will to the exclusion of her natural legal heirs and in that view of the matter, the Writ Petitioner's impleadment has been rejected. It is seen that Petitioner is already arrayed as Defendant No.1 in the Suit. He sought his impleadment as legal heir of Indubai on the basis of the Will. Otherwise independently also Defendant No.1 is entitled to his share in partition.

5. Record indicates that notice has been issued to the contesting Respondents and the said notice has been served. Notices

issued to Respondent Nos.2 to 8 and 10 to 12 are served as per Bailiff's Report. Notice issued to Respondent No.9 is returned unserved since she is reported to be dead.

6. Mr. Sutar has also referred to and relied upon the decision of the Supreme Court in the case of *Suresh Kumar Bansal Vs. Krishna Bansal and Anr.*¹ to contend that heirs claiming through the Will executed by the deceased would have to be brought on record. The decision on which, Mr. Sutar has placed reliance incidentally is in respect of the heirs who are the beneficiary under the Will and who are the family members of close blood relatives of the deceased. The ratio of this decision covers the facts of the present case.

7. Mr. Sutar would point out that Defendant No.1 in the Suit proceedings is the sole beneficiary under the Will of the deceased Defendant No.6 Indubai Kadam. Considering the fact that Defendant No.1 is also entitled to a share in partition of the Suit properties and he would now also be claiming under the Will of deceased Indubai Kadam, impleadment of all her legal heirs in the Suit proceedings should infact be allowed by the Trial Court as a proper course of action. This will necessary mean that the pending Application at page No.57 should also be allowed in the interest of justice if the Defendant No.1 / Petitioner is required to be impleaded as legal heirs of Indubai.

¹ 2010 (3) Mh.L.J. 376

8. Needless to state that the rights of all legal heirs of deceased Indubai Kadam are expressly kept open before the learned Trial Court.

9. In that view of the matter, the impugned order dated 27.04.2022 is not sustainable and is quashed and set aside. Resultantly, allowing the Application filed below Exhibit “118” by Defendant No.1. The Application for impleadment of the natural legal heirs of Indubai which is at page No.57 also stands allowed. Trial Court shall implead the Petitioners and the natural heirs as legal heirs of Indubai in the Partition Suit. These impleaded Respondent shall be entitled to the share of Indubai subject to either of them proving their entitlement in law. This order be passed to avoid multifarious proceedings.

10. All contentions of the parties including Defendant No.1 / Petitioner and natural legal heirs of deceased Defendant No.6 Indubai Kadam are expressly kept open before the learned Trial Court to agitate their entitlement for the share of Indubai Kadam. The Plaintiff shall carry out the amendment accordingly. Trial Court shall permit the amendment.

11. Considering that the Suit is of the year 2010 and in respect of partition of 5 – 6 properties as informed by Mr. Sutar, the learned Trial Court is requested by this Court to dispose of Regular Civil Suit No.48 of 2010 as expeditiously as possible and in any event within a period of six months from today.

12. The learned Trial Court is directed not to grant any unnecessary adjournments to the parties unless absolutely necessary.

13. Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

14. A server copy of this order shall be placed before the learned Trial Court on the next adjourned date in the Suit proceedings and the learned Trial Court shall pass appropriate directions for determination of the Suit proceedings strictly in accordance with law.

15. With the above directions, Writ Petition is allowed and disposed of.

[MILIND N. JADHAV, J.]

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