

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
-

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 13, 2024

P. C.:

1. Heard Mr. Narvankar, learned Advocate for Petitioner.
2. Present Writ Petition takes exception to the order dated 27.11.2023 passed by the learned Trial Court in Application below Exh. 110 whereby the Application filed by Respondent No. 1 under O. XXII, R. 4 of the CPC for his transposition as Plaintiff was allowed.
3. Facts in the present case are such that Suit is filed on 16.04.2015 by Nilkanth Maruti Buddhe for partition of ancestral property between Plaintiff and Defendants. Defendant No. 1 is Mangesh Nilkanth Buddhe (son), Defendant No. 2 is Mahesh (another son), Defendant No. 3 is Vidya (wife / widow) and Defendant No. 4 is Megha Pradeep Kolhe (daughter). On reading of paragraph No. 2 of the Suit plaint along with paragraph No. 5 of the plaint, it is clear that Suit was filed for partition of the Suit properties described in

paragraph No. 1 amongst the parties to the Suit. Reading of prayer clause (b) of the Plaint clearly reveals that Suit is filed by Plaintiff for seeking his 1/5th share in the suit property.

4. Mr. Narvankar would point out that after filing of the Suit on 16.04.2015, Plaintiff has executed registered Will dated 08.09.2015 bequeathing his property to Defendant No. 2 entirely. Though the Will is registered, Petitioner – Org. Defendant No. 1 disputes the said Will. Be that as it may, one of the submissions made by Mr. Narvankar is that once the Plaintiff has approached the Court for partition of the suit property and for seeking his 1/5th share, he would be precluded from disposing of his share by the alleged Will. Though I may not entirely agree with Mr. Narvankar on this issue but that is not the question before the Court in so far as the impugned order is concerned.

5. By virtue of the impugned order, learned Trial Court has given its imprimatur to the Will and has directed impleadment of Defendant No. 2 as the sole legal heir of the Plaintiff and has issued direction to carry out the said amendment and permitted Defendant No. 2 to prosecute the Suit as legal heir of Plaintiff.

6. Considering the averments made in the Suit plaint which are referred to and alluded to herein above, impleadment of Defendant

No. 2 as legal heir of Deceased Plaintiff only would therefore not be appropriate, especially in view of the fact that the Will is disputed and is to be adjudicated upon. In that view of the matter, impugned order dated 27.11.2023 is *prima facie* not sustainable. Hence, I propose to hear the Respondents.

7. Issue notice to the Respondents made returnable on 03.04.2024. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioners.

8. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

9. In the meanwhile, hearing of the Suit proceedings before the learned Trial Court is deferred until the present Writ Petition is determine on the next adjourned date.

10. Stand over to 3rd April, 2024.

Amberkar

[MILIND N. JADHAV, J.]

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by RAVINDRA
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