

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10844 OF 2024

Ajinkya Siram and Anr.

.. Petitioners

Versus

Sharda Ganeshprasad Jaiswal (Deceased)
through legal heirs Hemant Ganeshprasad
Jaiswal and Ors.

.. Respondents

.....

- Mr. Shon Gadgil, Advocate for Petitioners.
- Mr. Atul Damle, Senior Advocate a/w. Mr. Amit Singh i./by Mithin Khaire, Advocate for Respondent No.1(a).
- Mr. Rahul Soman, Advocate for Respondent Nos.1(b) and 1(c).

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 13, 2024

P.C.:

1. Heard Mr. Gadgil, learned Advocate for Petitioners; Mr. Damle, learned Senior Advocate for Respondent No.1(a) and Mr. Soman, learned Advocate for Respondent Nos.1(b) and 1(c).

2. By virtue of the impugned order dated 09.07.2024 passed below Exhibit-89 and Exhibit-95 in Final Decree Application No.13 of 2019, Respondent No.1(a) has been permitted by learned Trial Court to represent the estate of the deceased.

3. Petitioners alongwith Respondent Nos.1(b) and 1(c) being aggrieved would submit that though Respondent No.1(a) may claim to have absolute right to the estate of the deceased on the basis of the

Will dated 27.01.2021, a substantive suit has been filed by the Petitioners in the Trial Court being Regular Civil Suit No.765 of 2023 to challenge the right of Respondent No.1(a) and for partition.

4. Mr. Gadgil would vehemently submit that in view of the substantive challenge to the right of Respondent No.1(a) to claim under the Will the entire estate of the deceased, if the Petitioners succeed in the suit proceedings, then the property of the deceased will have to be apportioned between all his legal heirs namely Petitioners and Respondent Nos.1(a) to 1(c). In that view of the matter, in his usual fairness would submit that unless and until the suit proceeding is determined the Respondent No.1(a) and her legal heirs cannot presume themselves to be the owner of the entire estate and hence the impugned order is required to be interfered with. Mr. Soman supports the submissions of Mr. Gadgil and urges the Court to pass appropriate directions for the interregnum.

5. PER CONTRA, Mr. Damle, learned Senior Advocate appearing for Respondent No.1(a) at the outset, in his usual fairness would submit that undoubtedly the outcome of the subject suit filed by Petitioners will determine the rights of parties entitled to the estate of the deceased. However, he would submit that in the interregnum, if the execution proceedings are stalled or halted by any order of the Court then it would lead to further delay. He would fairly submit that

it would be in the interest of all parties if execution proceedings are proceeded, as by virtue of the said proceedings all that would be determined is the share of the parties and nothing more. He would submit that atleast if the procedural formalities are carried out by the Circle Officer on the basis of precepts that will be received from the office of the Collector / Tahsildar, the same can be taken cognizance of. Mr. Damle using his experience as a Senior Advocate would infact assist the Court in informing that in execution proceedings procedural hazards and delay are usually time consuming and to the detriment and interest of the parties. He would therefore persuade the Court to pass directions to expeditiously dispose of the pending suit proceeding filed by Petitioners.

6. In view of the above, I am of the opinion that if directions are passed to dispose the pending suit proceeding with respect to the challenge maintained to the Will by Petitioners, it would lead to a finality with respect to the *lis* between the parties.

7. In view of the above, learned Trial Court seized with the hearing of Regular Civil Suit No.765 of 2023 is directed by this Court to dispose of the suit as expeditiously as possible and in any event preferably within a period of one year from today after hearing all parties strictly in accordance with law. Parties are directed to co-operate with the learned Trial Court. Trial Court is directed not to give

adjournments to the parties and to give adjournments only if they are utmost necessary due to any emergency or exigency. All contentions of the parties are expressly kept open.

8. At the same time, learned Executing Court is directed to carry on with the execution proceeding but is directed not to pass any final decree in execution after carrying out the procedure and await the outcome of the suit proceeding which shall then be considered by the Executing Court after the aforesaid suit is decided. Parties shall be at liberty to place the decision and outcome of the said proceeding before the learned Executing Court after the same is decided.

9. One of the apprehension expressed by Mr. Gadgil is that Respondent No.1(a) has made an Application to the appropriate Authority seeking mutation of the name of Respondent No.1(a) in the record of the suit property. It is needless to state that mutation entries do not confer title to any property and therefore any title of Respondent No.1(a) or her legal heirs to the suit property shall be subject to the outcome of the suit proceeding filed by Petitioners and as per directions given hereinabove. In the meanwhile and in the interregnum since the impugned order states that Respondent No.1(a) shall continue to represent the estate of the deceased, the said order shall remain in operation until the suit proceedings are decided by the learned Trial Court. Needless to state that no equity shall be claimed

by Respondent No.1(a) for representing the estate of the deceased in the interregnum and any right accrued to them shall be subject to the outcome of the suit proceedings. Liberty to all parties to apply to the Executing Court or the Trial Court where the suit is pending during the interregnum for any orders in respect of the suit property.

10. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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