

Talwalkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8472 OF 2016

Smt. Meena Ramesh Gade & Ors. .. Petitioners.
Versus
Shri Bipin Narayan Gade & Ors. .. Respondents.

WITH
WRIT PETITION NO. 11282 OF 2024

Smt. Meena Ramesh Gade & Ors. .. Petitioners.
Versus
State of Maharashtra & Ors. .. Respondents.

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- Ms. Deepali Bagla i/b. A.H. Legal, Advocate for Petitioners.
- Mr. Rameshwar N. Gite a/w. Mr. Rohit Gorade, Mr. Sushant N. Tare, Advocate for Respondent Nos. 1 to 4 in WP/8472/2016 and for Respondent Nos. 2 to 5 in WP/11282/2024.
- Mr. P.G Sawant, AGP for Respondent No. 1 in WP/11282/2024.

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CORAM : MILIND N. JADHAV, J.
DATE : SEPTEMBER 4, 2024.

P.C.:

1. Heard Ms. Bagla, learned Advocate for Petitioners and Mr. Gite, learned Advocate for Respondents.

2. There are two Writ Petitions before the Court. One is Writ Petition No. 8472 of 2018 which impugns the Order dated 10th December 2015 allowing impleadment of Respondents in the legal heirship certificate proceedings being Civil Misc. Application No. 113 of 2015. The second is Writ Petition No. 11282 of 2024 which impugns the Order dated 12th July 2024 rejecting impleadment of the

Petitioners in the Legal Heirship Certificate proceedings filed by Respondents. Legal Heirship Certificate proceedings in Misc. Applications are claimed by either party through one descendant only, but shockingly disowning the entitlement of the other side. Both sides claim to be totally unrelated, save and except that they bear the same surname. Rights are claimed in respect of an immovable property situated in Kalyan which is open land.

3. Mr. Gite represents all Respondents in Writ Petition No. 8472 of 2016 and Respondent Nos. 2 to 5 in Writ Petition No. 11282 of 2024 who are the main contesting Respondents against the Petitioners.

4. The Petitioners and Respondents claim to derive or rather claim to be successors-in-title and descendant of one Pandurang Vishnu Gade who is the real owner of the subject land situated in Kalyan. His name originally appeared in the revenue record as holder of the land. Petitioners appearing before me being aggrieved with Mutation Entry No. 562 carried out by Competent Authority in the year 2013, challenged the said mutation entry before SDO successfully. SDO directed cancellation of the mutation entry by which name of one Shashikant Suryavanshi was added as a holder of the subject land at Kalyan. That entry was cancelled. But however, there was subsequent Mutation Entry No. 578 whereby the said Shashikant Suryavanshi

created third party rights and in so far as this Mutation Entry was concerned, SDO directed Writ Petitioners to obtain orders from the Civil Court. Petitioners never approached the Civil Court. They do so now in 2024. Respondents represented by Mr. Gite claim to be legal heirs of Pandurang Vishnu Gade. They filed a substantive suit being Suit No. 109 of 2015 for declaration against Petitioners, Shashikant Suryawanshi and all other third parties in respect of the subject land. In that Suit, Petitioners filed counter claim seeking title. That suit is decreed on 23rd December 2022 in favour of Respondents represented by Mr. Gite. Petitioners' counterclaim is rejected.

5. Both learned Advocates inform the Court that C.M.A. No. 154 of 2023 along with First Appeal is pending before the District Court against the decree in Suit No. 109 of 2015. In addition thereto Petitioners have now filed a fresh suit seeking declaratory relief in respect of the subject land being Suit No. 213 of 2024 in the Civil Court at Kalyan.

6. There is no reason as to why this Court should consider passing any order in the twin Writ Petitions before the Court which concern addition/deletion/- impleadment of parties to proceedings for legal heirship certificate when admittedly the aforementioned substantive first appeal as also the declaratory suit of Petitioners is pending and still undecided. It is time and again reiterated by this

Court in several of its orders that legal heirship certificate does not grant entitlement and title to any of the parties in whose favour such certificate is granted. Both parties i.e. Petitioners and contesting Respondents have filed proceedings for obtaining heirship certificate claiming to be heirs of Pandurang Vishnu Gade.

7. Today before me I have two sets of litigants, one represented by Petitioners' branch whereas the other represented by Mr. Gite's branch who both claim that they are totally unrelated to each other. Both sides claim to be legal heirs and descendants of deceased Pandurang Vishnu Gade. In so far as Mr. Gite's clients are concerned, they have already got an imprimatur of the learned trial Court in their favour. But substantive first appeal of Petitioners is pending. In that view of the matter, there is no reason for this Court to pass any order in the twin Writ Petitions which concern a challenge maintained to impleadment and deletion of parties in proceedings filed for obtaining legal heirship certificate by both branches, since any such order can only be passed after and subject to the decision of the Court in the pending first appeal and the declaratory suit which is referred to herein above. At the highest, this Court can only persuade the learned Civil Court to decide the first appeal as also the declaratory suit as expeditiously as possible and nothing more. In that view of the matter, learned trial Court seized with the hearing of the declaratory suit as also the learned District Court seized with hearing of the first appeal

are directed to dispose of the same as expeditiously as possible and strictly in accordance with law. In so far as the twin impugned orders are concerned as also the heirship proceedings, it is directed that they shall stand stayed and shall be decided subject to any order that would be passed in the first appeal and the declaratory suit which are referred to herein above. District Court hearing the Misc. Application shall note the above direction and adjourn the Application sine die until the first appeal and the declaratory suit is decided. Subject to the decisions therein, the Misc. Application shall be decided accordingly.

8. In view of the above directions and keeping all contentions of the parties open, both Writ Petitions are disposed.

[MILIND N. JADHAV, J.]

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