



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.8028/2022
(Sanjay V Omprakash and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M.S. Sharma, Advocate for petitioner.
Mr. Kothari, Advocate for resp. nos.1, 3 and 4.
Mr. A.R. Prasad, Advocate for respondent no.7.
Mr. Autkar, AGP for resp. no.6.

CORAM : N.R. Borkar, J.

DATE : 01-10-2024.

This petition takes exception to the order dated 14-07-2022 passed by the learned District Judge-1, Nagpur below Exhibit-22 in R.C.A. No.185/2018.

ii. The mother of the petitioner herein namely Kusumbai had filed a suit for declaration, cancellation of Sale Deed and permanent injunction against the respondent Nos.1 to 6 herein. The learned trial Court decreed the suit vide judgment and decree dated 09-01-2018.

iii. Being aggrieved by the judgment and decree of the learned trial Court, respondent Nos.1, 3 and 4 herein have filed the first appeal, which is pending on the file of District Court, Nagpur. During the pendency of the said first appeal the mother of the petitioner expired on 09-04-2019.

iv. By order dated 07-09-2019, the learned First Appellate Court has allowed the application filed by the respondent Nos.1, 3 and 4 for bringing legal representative of deceased Kusumbai on record.

v. The petitioner herein had thereafter filed an application and sought deletion of other legal representative of deceased Kusumbai from array of the parties on the ground that deceased Kusumbai has executed a Will in his favour. By the order impugned, the learned First Appellate Court has rejected the said application filed by the petitioner.

vi. The learned Counsel for the petitioner submits that petitioner alone is entitled to represent the estate of the deceased in view of execution of the Will by the deceased Kusumbai in favour of the petitioner. However, in view of the decision of the Hon'ble Supreme Court in ***Suresh Kumar Bansal v. Krishna Bansal and another*** reported in ***(2010) 2 SCC 162***, I am not inclined to entertain the present petition. In the said decision the Hon'ble Supreme Court has held :

20. It is now well settled that determination of the question as to who is the legal representatives of the deceased plaintiff or defendant under Order 22 Rule 5 of the Code of Civil Procedure is only for the purpose of

bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicata and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings. If this is allowed to be carried on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefited.

21. In order to shorten the litigation and to consider the rival claims of the parties, in our view, the proper course to follow is to bring all the heirs and legal representatives of the deceased plaintiff on record including the legal representatives who are claiming on the basis of the will of the deceased plaintiff so that all the legal representatives, namely, the appellant and the natural heirs and legal representatives of the deceased plaintiff can represent the estate of the deceased for the ultimate benefit of the real legal representatives. If this process is followed, this would also avoid delay in disposal of the suit.

vii. Petition is dismissed.

(N.R. Borkar, J.)