



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6381 OF 2022

Savitrabai Eknath Sonwane
VERSUS
Vishwanat Asaram Sonwane And Others

Mr. P. F. Patni, Advocate for petitioner
Mr. E. R. Pradhan, Advocate for respondent Nos. 1 to 6
Mr. D. D. Pande, Advocate for respondent No. 7
Mr. P. K. Nikam, Advocate for respondent Nos. 8 & 9

CORAM : R. M. JOSHI, J.
DATE : 03rd January, 2025

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. During the course of hearing, learned counsel for respondent Nos. 8 and 9 has made grievance that these respondents are sought to be joined as party to the execution proceedings being R.D. No. 22/2006 not in their individual capacities but as heirs of J.D. Nos. 7 and 8 and permitting their presence in execution would cause prejudice to the right to claim share in the suit properties. It is his submission that these respondents have already filed Regular Civil Suit No. 128/2020 for seeking partition of the subject property and as such no interference is called in order impugned.

3. Learned counsel for the petitioner, on instructions from the petitioner, makes statement that though it appears from Exhibit 56 that the respondent No. 8 and 9 are sought to be joined as a heir of deceased JD No. 7 and 9 however they are in fact intended to be joined as a co-parceners. In order to support the said submission, he drew attention of the Court to the prayer clause of the said application which according to him indicates that decree holder is conceding for giving independent share to the respondent No. 8 and 9.

4. In view of the judgment of Hon'ble Supreme Court in case of **Ganduri Kotesahwaramma and Another vs. Chakiri Yanandi and Another, (2011) 9 SCC 788**, the suit for partition continuous after passing of the preliminary decree and the proceedings in the suit gets extinguished only on passing of final decree. Since in this case final decree is yet to be passed, there is no impediment in joining the respondent No. 8 and 9 herein as a party to the said proceedings in the capacity of co-parceners. Learned counsel for the contesting respondents records his satisfaction for such order, as it would take care of their interest in the suit properties and enable them to get due share therein.

5. Hence, petition stands disposed of in following terms :-

a) Exhibit 56 stands allowed.

b) However, respondent Nos. 8 and 9 be joined as party to the execution proceedings bearing RD No. 22/2006 in their individual capacity and as co-parceners of the joint family.

c) Amendment be carried out in 2 weeks before the execution Court.

(R. M. JOSHI, J.)

bsj