



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

21 WRIT PETITION NO. 8449 OF 2025

Pradip Sayabanna Dhumma And Another
VERSUS
Sayabanna Sidhappa Dhumma Died Thr. Lrs. Deelip Sayabanna
Dhumma And Others.

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Advocate for Petitioners : Mr. S.V. Natu

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : July 16, 2025

PER COURT :-

1. Petitioners impugn the order dated 23.10.2023 passed by the learned District Judge, Latur below Exhibit 50 in Regular Civil Appeal No.141 of 2015.

2. Petitioners are original defendants in Special Civil Suit No.58 of 2010. The learned Civil Judge, S.D. Latur decreed the suit vide judgment and decree dated 14.3.2011 and declared that plaintiff is real owner of the suit property and defendant no.1 is ostensible owner. However, the decree as passed is challenged in Regular Civil Appeal No.141 of 2015. The appeal is pending. During pendency of appeal, application Exhibit-50 is filed by petitioners praying to frame additional issue, which states as under :-

“Whether legal heirs of deceased plaintiff (Sayabanna) are entitled for recovery of possession of suit property in the changing circumstance.”

3. It is contention of petitioners that legal heirs of deceased Sayabanna, who are now respondents in appeal are real brothers of appellant no.1. Hence, all legal heirs of Sayabanna are co-shares in joint family property or property in the name of Sayabanna would fall to shares as per law of succession. Therefore, status of parties and nature of properties is changed. As Sayabanna died on 2.6.2016, none other than appellant no.1 has locus standi to prosecute the suit. However, Trial Court passed order that issue of locus raised in application will be decided at the time of judgment instead referring to Trial Court for decision alongwith enquiry under Order 22 Rule 5 of the Civil Procedure Code.

4. Aggrieved by the aforesaid order, present writ petition has been filed.

5. Mr. Sharad Natu, learned advocate appearing for the petitioners submits that already Appellate Court has directed Trial Court to cause inquiry under order 22 Rule 5 of the Civil Procedure Code for determination of question as to legal representatives of deceased/plaintiff. If the issue as to locus

standi as proposed is framed, that can also be decided by the Trial Court, however, appellate Court postponed consideration of prayers in the application without justifiable reasons. According to him, to save time of the Court, it was in the fitness of things to relegate the issue to the Trial Court for recording finding.

6. It is difficult to accede with contentions of Mr. Natu, since proposed issue would not require recording of evidence. It is admitted fact that, plaintiff Sayabanna is expired and position of other legal heirs in changed circumstances can be determined by Appellate Court at the time of adjudication of appeal upon final hearing of the matter. There is no necessity to frame issue and relegate the parties to Trial Court to answer proposed issue. Therefore, appellate Court is justified to postpone decision on application at the time of judgment in appeal.

7. In that view of the matter, there is no merit in the writ petition. Writ Petition stands **dismissed**.

(S. G. CHAPALGAONKAR)
Judge

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