



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

**CIVIL APPLICATION NO. 9955 OF 2021
IN
FIRST APPEAL NO. 1868 OF 2019**

Basavraj Sharanyya Swami .. Applicant

Versus

The Executive Engineer, Patbhandhare
Majbutikaran Division Omerga
and others .. Respondents

Shri V. D. Hon, Senior Advocate i/by Shri Vinod B. Jadhav,
Advocate for the Applicant.

Shri A. S. Shelke, Advocate for the Respondent No. 1.

Ms. L. R. Thakur, Advocate h/f Shri L. C. Patil, Advocate for the
Respondent No. 2.

Shri B. A. Shinde, A.G.P. for the Respondent Nos. 3 and 4.

CORAM : SHAILESH P. BRAHME, J.

DATE : 16TH OCTOBER, 2025.

FINAL ORDER :

. Heard both sides.

2. Present application is by third person, who is the brother of the respondent No. 2 seeking impleadment in the first appeal U/O I Rule 10 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the "C. P. C.") being necessary party. It is contended that land was in the name of father of the applicant Sharanyya, who died on 29.09.2009 and the interest devolved on the applicant and the respondent No. 2

being sons. It is contended that fraudulently respondent No. 2 continued the proceedings before the Reference Court and misrepresented vide his application dated 17.11.2014 (Exhibit 11) that he is the only legal heir of the deceased claimant. Thus dodging the claim of the present applicant and suppressing material facts, the matter proceeded in the absence of the present applicant.

3. Learned senior counsel Mr. Hon for the applicant submits that the applicant is necessary party. Undisputedly, he is real brother of the respondent No. 2 and their father had filed application seeking reference. A reference was in fact registered in the name of their father on 28.11.2005. It is further submitted that considering the heirship certification and application Exhibit 11, the applicant has a share. It is submitted that even there was agreement between the brothers executed on 19.06.2025 to share 50% of the compensation. Reliance is placed on the judgment of the Supreme Court in the matter of A Viswanatha Pillai and others Vs. The Special Tahsildar for Land Acquisition No. IV and others reported in *(1991) 4 SCC 17*.

4. Per contra, learned counsel appearing for the respondent No. 2 vehemently repels the submissions of the applicant. It is submitted that applicant did not take timely steps when the matter was before the Reference Court and thereafter in the appeal. It is submitted that no remedy is availed U/Sec. 30 of the Land Acquisition Act (for the sake of brevity and convenience

hereinafter referred as to the “L. A. Act”). The heirship certificate indicates other heirs also, but those did not appear in the appeal. She places reliance on various judgments and orders passed by the Coordinate Bench in the matter of Digambar Sambaji Pused Vs. State of Maharashtra reported in *2008(3) Mh.L.J. 256*, Machindra Santram Kutwad Vs. Sharad Khanderao Survase and others reported in *2012(6) Mh.L.J. 688*, order dated 03.08.2012 passed in Civil Application No. 3847 of 2012 in F. A. No. 2484 of 2011 in the matter of **Kamalbai Mailari Karbhari and others Vs. The State of Maharashtra and others** and order dated 18.02.2021 passed in Civil Application No. 6453 of 2020 in **First Appeal No. 76 of 2021 in the matter of Jyoti Dipak Godase and others Vs. The Ex. Engineer, Minor Irrigation Division, Osmanabad and another.**

5. I have considered rival submissions of the parties. There is no dispute that Sharanayya, father of the applicant and the respondent No. 2 was owner of the land in question. After his demise on 29.09.2009 his interest normally would devolve upon the heirs. Heirship certificate would indicate that there are other heirs also. Sharanayya had initiated proceedings on the basis of which reference was registered on 28.11.2011. After him reference could have been prosecuted by the applicant along with the respondent No. 2. The agreement dated 19.06.2025 shows the consensus to share compensation amount.

6. However, at the same time it cannot be lost sight that no

steps were taken by the applicant when the matter was pending before the Reference Court. It is rightly contended by the learned counsel for the respondent No. 2 that after demise of father reference was pending till 2015. He could have taken steps for impleading him from 2009 till this date. The matter was in the High Court from year 2019. During this period also no application is made by the applicant. The applicant could have resorted to the remedy of Sec. 30 of the L. A. Act.

7. Though relationship is not disputed, at this juncture it is difficult to determine the exact interest of the applicant. There are disputed questions of facts, which cannot be gone into for the first time when statutory remedy is not availed of by the applicant. Just because ostensibly party is necessary party, application U/O I Rule 10 of the C. P. C. cannot be entertained. It would be open for the applicant to resort to appropriate remedy for asserting his right even to the extent of amount of compensation which is monetary claim.

8. Learned senior counsel has relied upon the judgment of the Apex Court in the matter of A Viswanatha Pillai and others Vs. The Special Tahsildar for Land Acquisition No. IV and others (supra). I have gone through para No. 12 of the judgment. The facts are distinguishable. In the present case I have already observed that there are other legal heirs also and it would be open for the applicant to seek enforcement of the agreement dated 19.06.2025. The judgment will not enure to the benefit to the

applicant.

9. The learned counsel for the respondent has relied on various judgments and orders of Coordinate Bench in the matters of Digambar Sambaji Puded Vs. State of Maharashtra, Santram Kutwad Vs. Sharad Khanderao Survase and others, Kamalbai Mailari Karbhari and others Vs. The State of Maharashtra and others and Jyoti Dipak Godase and others Vs. The Ex. Engineer, Minor Irrigation Division, Osmanabad and another (supra). Consistent view has been taken that impleadment of the parties for the first time in the Reference Court or the Appellate Court is impermissible. I propose to adopt the same course.

10. The civil application is rejected. However, it is made clear that the applicant or the private respondent will be at liberty to take recourse to the remedy as is permissible in law.

[SHAILESH P. BRAHME J.]

bsb/Oct. 25