



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

910 WRIT PETITION NO. 14390 OF 2023

TARABAI BHAURAO WAGHMODE AND OTHERS

VERSUS

SOPANDEO BAPUJI WAGHMODE DECEASED THROUGH LRS MANISHA
SOPANDEO WAGHMODE AND OTHERS

Mr.H.D. Deshmukh, Advocate for the petitioners.

Mr.C.K. Shinde, Advocate for respondent Nos. 1A-1C,2 and 3.

CORAM : KISHORE C. SANT, J.

DATE : 18.03.2025

PC :-

01. Heard learned Advocates for the parties. This petition is against an order passed by the Executing Court i.e. learned II Jt. Civil Judge, Junior Division, Newasa dated 09.08.2023 in Regular Darkhast No. 42 of 2011 on application below Exh.38. The grievance of the petitioners, who are Judgments Debtors [JD] and already shown as such in the execution petition is that the JD-Bhaguji Waghmode died and by the impugned order one Pravin Waghmode is allowed to be joined as party-JD, on application by the Decree Holder (DH). It is a case that said Pravin happens to be a son of petitioner No.1, grandson of petitioner No.2 and nephew of petitioner No.3. Said Pravin is already represented by petitioner No.1 i.e. JD. It is submitted that said Pravin is, therefore, not a necessary party at all to the execution as he is neither residing in the village nor is concerned with the relief sought for in the suit.

02. Learned Advocate Mr. Shinde vehemently opposes the petition. He submits that unless Pravin is added as a party, the Court cannot proceed with the execution. Pravin has not challenged the order before this Court. The present petitioners, thus, do not have any right to challenge the order. He, thus, prays for rejection of the petition.

03. Learned Advocate Mr. Deshmukh strenuously submits that when Pravin is not having any concern, is joined as party. Before adding him as a party, it was necessary for the DH to show as to how he has succeeded to the property of the JD-1 Bhaguji. If at all there any cause of action against Pravin, that would be a fresh cause of action and in view of that he could not have been directly added as party to the execution proceeding.

04. On going through the impugned order, this Court has gone through the judgment in the case of **Prabhakara Adiga Vs. Gowri and Others, reported in 2017 (4) SCC 97**. The Hon'ble Apex Court has considered that the legal representative is a necessary party even in the execution proceeding, where decree is for simplicitor injunction, by relying upon doctrine of "*actio personalis moritur cum persona*". This Court does not find any illegality. This Court finds it difficult to appreciate the arguments that if Pravin is to be added as party, it would be a fresh cause of action, which requires independent adjudication and it is only thereafter he can be added as party to the execution. This Court is also not inclined to accept the contention of the petitioners that the person who is joined as a party i.e. Pravin has not challenged order before this Court. No prejudice is shown to have been caused to the

present petitioners, who are other JDs.

05. In view of the above, the petition stands dismissed with no order as to costs. All the points are kept open to be decided by the executing Court.

[KISHORE C. SANT, J.]