

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1886 OF 2023

IN

FIRST APPEAL (St.) NO. 10104 OF 2022

Sandip Vilasrao Patil and Others

...Applicants

Versus

Prakash Ramchandra Patil and Another

...Respondents

Mr. Prithviraj S. Gole for the Applicants.

Mr. Kalpesh U. Patil for Respondent No. 1.

Coram : Sharmila U. Deshmukh, J.

Date : 26th March, 2025.

P. C. :

1. Interim Application has been preferred seeking leave to file the present Appeal.
2. Learned counsel appearing for Applicants submits that Respondent No. 1 had applied for probate of Will of one Babutai Namdev Patil who was paternal grandmother of Applicant Nos. 1 and 2 and paternal aunt of Applicant No. 3 and stood in the same relationship as the Respondents. He would further submit that without impleading the present Applicants, probate of Will of Babutai was granted. He submits that property which was bequeathed under the Will was joint family ancestral property and as such, present Applicants have interest

in the estate of deceased and were entitled to be issued citations, which has not been done in the present case. He submits that as the Applicants were not party to the proceedings, the present Application has been filed for leave to file Appeal.

3. The said Application has been resisted by learned counsel for Respondent submitting that the deceased Babutai did not have any legal heir and the estate came to be bequeathed to the present Respondent No. 1. He would further submit that issue as to whether the same is a joint family property is required to be decided in the Civil Court and therefore, Applicants are not entitled to file Appeal.

4. The fact is undisputed that the property which was bequeathed by Babutai by Will to Respondent No. 1 belonged to her husband. It is specific case of the Applicants that the property was joint family property and therefore, the same could not have been bequeathed by Will. In any event, the present Applicant Nos. 1 and 2 are grandchildren of brothers of deceased's husband and stand on the same footing as that of Respondent No. 1. As the claim is that the property is joint family property, by grant of Probate of Will, the Applicants are aggrieved by the impugned judgment and entitled to file the Appeal.

5. In light of above, Interim Application is allowed.

6. Leave to file Appeal is granted.

[Sharmila U. Deshmukh, J.]