

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5043 OF 2025

Ashok Anandrao Mole

...Petitioner

Versus

Shrikrishna Manohar Mule (since deceased)
through LRs. Asmita Mule and ors.

...Respondents

Mr. Shashank Mangle, i/b Tanmay Shembavnekar, for the
Petitioner.

CORAM: N. J. JAMADAR, J.
DATED: 22nd APRIL, 2025

ORDER:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order dated 13th January, 2025 passed by the learned District Judge, whereby the learned District Judge, apparently *suo motu* ordered issue of notices to the legal representatives of the deceased appellant No.1 and directed their impleadment as party respondent Nos.4 to 7 to the appeal.
3. The deceased respondent No.1 had instituted a suit for specific performance of contract against the petitioner and Smt. Parvati Anandrao Mole, defendant No.1 and mother of the petitioner, and two others. By a judgment and order dated 19th April, 2017 in RCS No.2044 of 2012 the said suit

was decreed and the defendants were directed to execute the sale deed in respect of the suit property in favour of the plaintiff.

4. The petitioner and his mother Smt. Parvati preferred appeal against the said judgment and decree, being RCA No.153 of 2017. During the pendency of the said appeal, appellant No.1 Smt. Parvati passed away on 6th October, 2018. Thereupon the petitioner preferred an application to permit himself to be brought on record as the legal representative of appellant No.1 on the strength of the Will, purportedly executed by appellant No.1 bequeathing the suit property to the petitioner.

5. By an order dated 22nd October, 2021, the learned District Judge rejected the prayer of the petitioner – appellant No.2 to substitute himself as a legal representative of the deceased appellant No.1 on the strength of the said Will. However, the petitioner was permitted to prosecute the appeal in his personal capacity.

6. It appears that when the appeal was taken up for hearing, the learned District Judge was of the view that it was necessary to issue notices to other legal representatives of the deceased appellant No.1 as it was for the Court to take

care of the interest of other legal heirs. Thus, the impugned order came to be passed.

7. The learned Counsel for the petitioner submitted that the petitioner – appellant No.2 is the sole legal representative of the deceased appellant No.1 on the strength of the Will executed by the deceased appellant No.1. None of the other legal representatives of the deceased have contested the bequest in favour of the petitioner. In these circumstances, the learned District Judge could not have directed the impleadment of the other legal heirs as the respondents to the appeal.

8. Evidently, the learned District Judge was confronted with the question as to whether the petitioner – appellant No.2 alone be permitted to represent the estate of the deceased – appellant No.1. Initially, such a prayer of the petitioner was rejected by an order dated 22nd October, 2021. If the learned District Judge was of the view that there was a dispute as to whether the appellant No.2 alone was the legal representative of the deceased appellant No.1 and, entitled to represent the estate of the deceased appellant No.1, the proper course for the learned District Judge was to resort to the provisions contained in Order XXII Rule 5 of the Code of

Civil Procedure, 1908 (“the Code”) and determine the issue as to who in law is entitled to represent the estate of the deceased – appellant No.1.

9. Since the order was passed *suo motu*, this Court does not consider it appropriate to issue notice to the parties. Instead, a direction that the impugned order be treated as a notice to the proposed legal representatives of the deceased appellant No.1 i.e. respondent Nos.4 to 7 and the learned District Judge shall decide the issue as to who in law is entitled to represent the estate of the deceased appellant No.1 in accordance with the provisions contained in Order XXII Rule 5 of the Code, would serve the ends of justice.

10. Ordered accordingly.

11. The petition stands disposed.

12. The learned District Judge shall decide the said issue on its own merits and in accordance with law.

[N. J. JAMADAR, J.]