

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.617/2024

Ratan S/o Samadhan Dongre

...Versus...

Sanjay S/o Laxman Dongre and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. Vivek Awchat, Advocate for petitioner
Mr. R.G. Kavimandan, Advocate for respondent Nos.1 and 2

CORAM : SACHIN S. DESHMUKH, J.

DATE : 20/08/2025

1. In a suit for partition, separate possession and mesne profits in relation to agricultural properties, the petitioner is one of the defendants. After completion of pleadings, the issues are framed and suit has advanced to the stage of evidence.

2. In the interregnum, on account of death of defendant No.3 the legal heirs of said defendant sought impleadment in the suit. Whereas the petitioner herein filed application under Order 22 Rule 10 of the Code of Civil Procedure with an assertion that the defendant No.3 during life time has executed a registered Will-deed in favour of the petitioner as such, the interest has been devolved upon the petitioner in relation to the subject matter of suit and resultantly prayed that the petitioner who is incidentally defendant No.1 would continue as legal representative of deceased defendant No.3. As such, the plaintiff be directed to carry out the consequential amendment.

3. The said application is resisted by the contesting litigants stating that same is not tenable, when admittedly the legal heirs of deceased defendant No.3 have filed an application disputing execution of Will-deed in favour of the petitioner herein and further seeking impleadment.

4. The trial Court considering applications has allowed the application of the legal heirs of deceased defendant No.3 with direction to implead these legal representatives as parties to the suit, whereas the request of the petitioner that on the strength of the registered Will-deed, the petitioner be permitted to prosecute the suit as legal heirs of the deceased defendant No.3 is rejected.

5. Raising an exception to the aforestated orders, learned Counsel for the petitioner has submitted that in the wake of execution of registered Will-deed in favour of the petitioner in relation to subject matter of suit, as such, the interest has been devolved upon the petitioner. Therefore, it is the petitioner who will succeed as legal heir of deceased defendant No.3 and in the process, has objected application for impleadment presented by the legal heirs of deceased defendant No.3 and contended that these aspects are ignored by the trial Court while rendering the orders under challenge. Therefore, the application presented by petitioner ought to have been allowed, whereas the application presented by the legal heirs of deceased defendant No.3 deserves no consideration.

6. Per contra, learned Counsel for the respondent Nos.1 and 2 has supported the impugned orders and in the process submitted that the status of the legal heirs of the

deceased defendant No.3 is undisputed and the claim which the petitioner is staking on the basis of the registered Will-deed is seriously objected by these legal heirs, as such, the trial Court is justified.

7. The trial Court considering the fact that the status of the legal heirs of deceased defendant No.3 is undisputed and the objection to the registered Will-deed by these legal heirs of deceased has allowed the application of legal heirs ensuring impleadment as legal heirs of deceased defendant No.3 to the suit and the application so presented by the petitioner is turned down.

8. Having heard the respective Counsel for the litigating sides it is a matter of record that the status of the legal heirs of deceased defendant No.3 is undisputed. The petitioner also does not dispute the same, therefore, their entitlement to be impleaded as necessary party respondents, as legal heirs, is equally undisputed. Pertinently these legal heirs have seriously objected the Will-deed executed in favour of the petitioner by the deceased defendant No.3. The genuineness and validity of the said Will-deed, although registered, will have to be decided.

9. In absence of the adjudication of the validity of registered Will-deed, the trial Court is justified in rejecting the application presented by the petitioner under Order 22 Rule 10 of the Code of Civil Procedure and is further justified in allowing the application for impleadment of the legal heirs of deceased defendant No.3.

10. Nevertheless Order 22 Rule 10 of the Code of Civil Procedure confers discretion on the Court hearing the suit to

grant leave for the person. As a matter of record claim of petitioner of devolution of right is seriously disputed by legal heirs of deceased defendant No.3, as such, is not conclusive. In the peculiar facts and circumstances, the trial Court has rightly refused to exercise its discretion same does not warrant any interference.

11. Resultantly, no error is noted in the order rendered by the trial Court. As such, the writ petition is liable to be dismissed and accordingly, the same is dismissed with costs of Rs.5,000/- (Rupees Five Thousand Only). Cost shall be deposited with trial Court within a period of four weeks from this order.

(SACHIN S. DESHMUKH, J.)