



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

Writ Petition No.904/2025

Anand V Mrs. Shila

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

Court's or Judge's orders

Mr. A.A. Sambaray, Advocate for petitioner.
Mr. P.K. Mishra, Advocate for respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 09-12-2025.

Heard learned Counsel for the petitioner.

2. Petitioner's challenge is to order dated 16-12-2024 passed by the trial Court, allowing the application for bringing on record the legal representatives of deceased defendant no.1-Nirmalabai Dnyaneshwar Chamat.

3. Learned Counsel for the petitioner submits that the petitioner is the legatee on the basis of Will Deed dated 19-01-2023 and to the exclusion of the legal heirs of the deceased only the name of the petitioner be continued as legal representative of the deceased. He submits that the trial Court has failed to conduct any enquiry under Order 22 Rule 5 of the Code of Civil Procedure, as to who are the legal representative, and straightway allowed the application by the impugned order.

4. In support of his submissions, he has relied upon the judgment of this Court in the matter of Parwatibai w/o Namdeo vs Ramrao Barikrao Lahane (Civil Revision Application No.1102/2019 dated 21-09-2001), Jaladi Suguna (Dead)

through Lrs. Vs Satya Sai Central Trust and others, reported in 2009(Sup) BCR 492 and Radhey Shyam vs Radha Mohan Paliwal and others, reported in 2012 AIR CC 2867. By relying on all these judgments, he submitted that the conduct of an enquiry to ascertain the actual legal representatives, was imperative, at this stage.

5. As against this, Mr. Mishra, learned Counsel for the respondents vehemently submits that the respondents to the petition are the legal heirs of the deceased. He submits that the petitioner is original defendant no.2 in the civil suit and the original plaintiff had filed an application for bringing on record the legal representatives of deceased defendant no.1 which is allowed and same is the subject matter of challenge. He submits that the persons who are the legal heirs of deceased have been rightly brought on record and there was no need of conducting any enquiry since the assertion that these persons were the legal heirs, is not disputed by the plaintiff. In support of his submissions, he placed reliance upon the judgment of Coordinate Bench of this Court in the matter of Dayabhai Nenshibhai Shah vs Hirachand Nensibhai Shah (D) thr. Lrs and another, reported in 2025(5) ALL MR 760.

6. While considering the controversy involved, it has to be seen that the trial Court has passed the order allowing the application for bringing on record the legal heirs of deceased defendant no.1 on the application filed by the plaintiff. The plaintiff has himself stated the names of legal heirs about which there is no dispute from the other side.

7. The Counsel for petitioner has primarily harped on the contention that the petitioner being legatee under the Will is only entitled to be brought on record as legal representatives to the exclusion of the legal heirs. The judgments relied by the learned Counsel for the petitioner does not deal with this aspect that to the exclusion of the legal heirs, the name of the legatee under Will only be brought on record. Having regard to the position of law as laid down by the judgment in the matter of **Dayabhai** (supra), although the legatee can be considered to be one of the legal representatives, however, it is not acceptable submission that to the exclusion of the legal heirs only the name of legatee needs to be brought on record. The position of law as laid down in the judgment of **Jaladi Saguna** (supra) is not disputed, however in view of the facts of this case, no enquiry is warranted at this stage.

8. Perusal of the impugned order shows that the trial Court has passed the order on the application submitted by the plaintiff mentioning the names of the legal heirs. As such the controversy sought to be raised by the petitioner being legatee and hence entitled to represent the estate of the deceased will be considered during the course of adjudication of the trial. The suit is for partition and separate possession and thus even the entitlement of the petitioner on the basis of document of will has to be decided in the suit. Nothing can be concluded about exclusion of the legal heirs, at this stage.

9. On perusal of the impugned order, no perversity is seen with the reasoning, hence, no indulgence is warranted under Article 227 of the Constitution of India. Writ Petition is accordingly dismissed.

(Prafulla S. Khubalkar, J.)