



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

WRIT PETITION NO.5262 OF 2025

Petitioner : Ashok Trimbak Bhalerao,
Aged 74 Years, Occu. Agriculturist,
R/o Balaji Nagar, Nagpur,
Through Power of Attorney Holder
Kedar Laxmikant Vaidya,
Aged about 35, Occu. Service,
R/o Deulgaon Raja, Tq. Deulgaon Raja,
District Buldhana.
– Versus –

Respondents : Bhaskar Narayan Bhalerao (Dead),
1) Prakash Prabhakar Bhalerao,
Aged above 64 yrs., Occu. Business,
R/o Block No.2, Raj Galaxy, A-Wing Rajrang,
Near Assian Paint, on Mata Mandir 2 Kulswamini
Road, N6 SIDCO, Sambhaji Nagar A 431001.
2) Smt. Manik Purushottam Mahajan (Dead),
2a) Purushottam Devidas Mahajan,
Aged 75, Occu. Agriculturist.
2b) Tushar Purushottam Mahajan,
Aged 35 Yrs., Occu. Agriculturist.
Both 2a and 2b r/o Mahajan Building,
Opposite BDCC Bank, Main Road, Buldhana 443001.
2c) Sau. Sangita Sunil Panase,
Aged major, Occu. Housewife,
R/o 1429, Shukarwar Peth, Bajirao Road,
Near Laxmi Furniture, New Vishnu Square,
Pune 411002.

2d) Sau. Varsha Satish Paralikar,
Age Major, Occu. Housewife,
R/o 601, Spring Building Seasons Complex,
Behind Vijay Sales, Near Sandeep Hotel, Bhoilwadi,
Kalyan West 421304.

2e) Sau. Ashvini Sunil Bhatia,
Aged Major, Occu. Housewife business,
R/o Flat No.6, Second Floor, K-4, Building Gaurihar,
Aditya Nakoda Enclave 2, Sinhagadh Road,
Pune 411030.

Mr. Abhay Sambre, Advocate for the Petitioner.

Mr. Tejas Deshpande, Advocate for Respondent No.1.

None appears for Respondent No.2.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **9th DECEMBER, 2025.**

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Advocates for the parties.

02. The controversy in the present petition relates to the execution proceedings bearing Regular Darkhast No.22/2004, which was initially filed by one Bhaskar Narayan Bhalerao, in whose favour a decree for possession in respect of immovable property was passed vide judgment and decree dated 29/01/2004 in R.C.S. No.51/2001.

03. The present petitioner, who is the son of the real brother of the decree holder Bhaskar, claims that deceased Bhaskar had executed a

will dated 04/10/2008 in his favour. According to the petitioner, the said will is a registered document. The petitioner, therefore, claims to be the legal representative of deceased Bhaskar on the basis of the said will. As against this, respondent No.1 also claims to be the legal representative of the deceased decree holder on the basis of a registered will dated 12/02/2012, stated to have been executed in his favour. Respondent No.1 is nephew i.e. son of the brother of the deceased-decree holder. The present petitioner had filed an application for addition of his name in the Darkhast proceedings under Order I Rule 10 of the Code of Civil Procedure (C.P.C.), which came to be rejected by the learned Executing Court vide order dated 21/06/2025. A perusal of the said order, which is impugned in the present petition, indicates that the learned Executing Court rejected the application by placing reliance on the judgment passed in Succession Case No.24/2012 and having regard to the earlier order dated 05/11/2019, whereby the application for addition of party filed by the present respondent No.1 (Exh.24) was allowed and the applications filed by one Ranjana Vaidya (daughter of the decree holder's brother) vide Exh.32 and Exh.107 were rejected. The learned Executing Court has also observed that the present petitioner was aware of the pending litigation and yet did not move an application for addition of party within a reasonable period.

04. As regards Succession Case No.24/2012, it must be stated that the present petitioner, respondent No.1, and the said Ranjana were parties to the said succession certificate proceedings. The present petitioner and respondent No.1 were claiming a right to the debt, which was the subject matter of the aforesaid succession case, on the basis of wills allegedly executed in their favour by deceased Bhaskar (the decree holder). As against this, Ranjana, who was the objector, raised an objection on the ground that she was a Class-II legal heir of deceased Bhaskar and was entitled to receive the debt forming the subject matter of the succession.

05. Perusal of the judgment further indicates that respondent No.1, who was the applicant in the succession certificate case, had entered the witness box and that certain documents were exhibited during the course of his evidence. However, a perusal of the judgment does not indicate that the will dated 12/02/2012, allegedly executed in his favour, was proved or exhibited in the succession certificate proceedings. It is further apparent that the present petitioner, although he was a party to the proceedings, did not contest the succession case. The succession case was also not decided on merits, but came to be disposed of in view of an amicable settlement between present respondent No.1 and the objector, Ranjana.

06. Since the will was neither proved nor exhibited in the succession case, the judgment passed therein cannot operate as res judicata even for the limited purpose of determining the status of the parties as legal representatives of the deceased-decree holder in an inquiry under Order 22 Rule 5 of C.P.C.

07. As regards the order dated 05/11/2019 passed in Regular Darkhast No.22/2004, the learned Executing Court allowed the application for intervention filed by respondent No.1 while rejecting the applications (Exh.32 and Exh.107) filed by Ranjana. A perusal of the said order demonstrates that the original will dated 12/02/2012, on the basis of which respondent No.1 claims to be the legal representative, was not placed on record. The order appears to have been passed by referring to photocopy of the alleged will. It also does not appear that any attesting witness to the will was examined during the course of the inquiry under Order 22 Rule 5 of the C.P.C. The learned Executing Court held that since the will is not declared to be a false or bogus document by any competent court, it continued to remain in force and, accordingly, allowed the application by placing reliance on the will which was not proved in accordance with law. It must also be stated that the application at Exh.24 was decided in the absence of the present petitioner, and as such, the same is not binding on him.

08. As regards the issue of delay, in the considered opinion of this Court, it will not be fatal to the case of the petitioner having regard to the peculiar facts of the case, wherein both the petitioner and respondent No.1 claim to be the legal representatives of the deceased-decree holder, although the alleged wills on the basis of which such claims are made, have not been proved before any Court of competent jurisdiction

09. Mr. Tejas Deshpande, learned Advocate for respondent No.1 places strong reliance on the judgment of the Hon'ble Supreme Court in *Mrs. Annupam Pruthi and others vs. Smt. Rajen Bal and others, (1989) 1 SCC 147*, to contend that once an inquiry is held under Order 22 Rule 5 of the C.P.C., another application for the same purpose cannot be entertained. Perusal of the said judgment demonstrates that one Prakash Bal, who was a party to proceedings under Section 20 of the Arbitration Act, 1940, had expired. After his demise, his widow filed an application for bringing the legal representatives on record, wherein she mentioned herself, two daughters, and the minor son as the legal representatives of deceased Prakash Bal. The application filed by the widow was allowed vide order dated 24/07/1972. Thereafter, the widow filed another application contending that she had found a will executed by her husband, under which she and her minor son alone were entitled to receive the property, which formed subject matter of the dispute. The said application was

rejected by the learned Single Judge, however, the intra-Court appeal preferred against the said order was allowed. The matter ultimately reached the Hon'ble Supreme Court in this backdrop. The Hon'ble Supreme Court held that since the widow herself had earlier filed an application for bringing the names of all the legal heirs of deceased-Prakash Bal on record, a subsequent application at her behest seeking recall of that order could not be entertained.

10. It will be pertinent to note that the Hon'ble Supreme Court has clearly observed in paragraph 4 of the said judgment that the earlier order, by which the names of all the legal heirs were brought on record, could not be recalled or set aside having regard to the peculiar facts of that case, wherein both the applications, namely, the earlier application for bringing all the legal heirs on record as legal representatives and the subsequent application for bringing the names of alleged beneficiaries to the will, were filed by the widow herself, held to be not maintainable. The ratio of the said judgment will, therefore, not applicable to the present case, where the earlier application was filed by respondent No.1 and the subsequent application for addition of parties has been filed by the present petitioner. In the present petition, the petitioner has not made only one application for the purpose of joining his name as a party to the execution proceedings.

11. Although an inquiry under Order 22 Rule 5 of the C.P.C. is summary in nature, in the considered opinion of this Court, the learned Executing Court ought to have recorded evidence and examined as to whether the person claiming to be a legal representative on the basis of a will had proved the will in accordance with Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. Moreover, on the basis of photocopy of the will, the learned Executing Court should not have allowed the application filed by respondent No.1 and non-suited the present petitioner by placing reliance on such an order.

12. In view of the aforesaid, in the considered opinion of this Court, the impugned order dated 21/06/2025 cannot be sustained and is liable to be quashed and set aside. The learned Executing Court is directed to conduct inquiry in accordance with Order 22 Rule 5 of C.P.C. to determine the status of the rival parties as legal representative of deceased-decree holder. Needless to mention that the learned Executing Court shall decide the proceedings on its own merits and without being influenced by the observations made by this Court in the present order, since the same are only for the limited purpose of deciding entitlement of the present petitioner to contest inquiry under Order 22, Rule 5 of C.P.C. Having regard to the fact that the execution is pending since the year 2004, the learned Executing Court is requested to expedite the execution proceedings

and decide the same as early as possible and in any case before 31st December, 2026.

(Rohit W. Joshi, J.)

**sandesh*