



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

36 WRIT PETITION NO. 10908 OF 2024

Varsha Piraji Gagare And Another
VERSUS
Piraji Damodhar Gagare And Others

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Advocate for Petitioners : Mr. R.A. Tambe
Advocate for Respondents : Mr. R.B. Temak
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CORAM : S. G. CHAPALGAONKAR, J.

Dated : February 02, 2026

ORDER :-

1. Present writ petition takes exception to the order dated 5.8.2024 passed by learned Civil Judge J.D., Rahuri, below Exhibit-28 in Regular Darkhast No.4 of 2023 arising out of Regular Civil Suit No.255 of 2002.
2. The respondent no.1 filed proceeding for execution of partition decree passed in R.C.S. No.255 of 2002. Regular Darkhast no.4 of 2023 has been registered and pending. Petitioners being daughters of respondent no.1 filed an application below Exhibit-16 for adding them as party in Darkhast claiming right in property in view of Section 6 of Hindu Succession Act. In this backdrop, respondent no.1 had filed an application below Exhibit-28 seeking permission to

withdraw the Execution Proceeding. Executing Court allowed application and disposed of R.D. No. 4 of 2023.

3. Mr. Tambe, learned advocate appearing for petitioners contends that withdrawal of Execution Proceeding is made only with a view to defeat right accrued to petitioners without taking decision on petitioners application seeking impleadment in Darkhast. Mr. Tambe, would rely upon observations of the Hon'ble Supreme Court of India in case of **Ganduri Koteshwaramma and another Vs. Chakiri Yanadi and another** reported in (2011) 9 SCC 788.

4. Per contra, Mr. Temak, learned advocate appearing for respondents supports the impugned order.

5. Having considered submissions advanced, apparently, petitioners were minors when R.C.S. No.255 of 2002 was filed or decreed. They were not party to suit. Now, they wish to claim right in view of amended provisions of Hindu Succession Act, whereby the daughters are given status of coparcener. Respondent no.1 had initiated proceeding for execution of decree vide R.D. No.4 of 2023. However, after getting application for impleadment on behalf of petitioners,

withdrawn same. Respondent cannot be compelled to continue with executing proceeding, however, his action of withdrawal of execution proceeding would not defeat right, if any, accrued in favour of petitioners. Petitioners are at liberty to exhaust their remedies as available under law with a view to implement their right accrued vide of amendment in Hindu Succession Act. With these observations, writ petition stands **disposed of**. Needless to state that time consumed in prosecuting present writ petition or application for impleadment in execution proceeding shall be excluded in case petitioners exhaust alternate remedy as available under law.

(S. G. CHAPALGAONKAR, J.)

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