



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13710 OF 2024

Kamlabai Purshottam Khandelwal
Age: 79 years, Occu: Household,
R/o: Adate Bazar, Ahmednagar

.....PETITIONER

VERSUS

1. Shyamsundar Rameshwar Khandelwal
Age: 54 years, Occu: Service,
R/o: Firodiya Complex,
Above Kailas Udipi Hotel,
Khist Lane, Ahmednagar.
2. Ramkumar Mangalchand Khandelwal
Age: 69 years, Occu: Nil,
R/o Adate Bazar, Ahmednagar.
3. Ramgopal Mangalchand Khandelwal
Age: 72 years, Occu: Business,
R/o: Adate Bazar, Ahmednagar.
4. Ramdeo Purshottam Khandelwal,
Since deceased, through L.Rs.
- 4-A. Kiran Ramdeo Khandelwal,
Since deceased.
- 4-B. Sonali Niraj Rathod,
Age: 32 years, Occu: Household,
R/o: C/o Maharashtra Seeds, Ganj Bazar,
Behind Vegetable Market,
Ahmednagar.

.....RESPONDENTS

Mr. S. S. Bora, Advocate for the Petitioner
Mr. A. D. Ostwal, Advocate for Respondent no.1

CORAM : AJIT B. KADETHANKAR, J.

DATED : 06TH APRIL, 2026

ORAL JUDGMENT :-

. Rule. Rule made returnable forthwith.

2. Heard for final disposal by consent of Mr. S. S. Bora, learned Counsel for the petitioner and Mr. A. D. Ostwal, learned Counsel for respondent no.1.

3. Special Civil Suit No.44 of 2008 was filed in the Court of learned Civil Judge Senior Division, Ahmednagar by the present respondent no.1 against the respondent nos.2, 3 and another real brother namely deceased Ramdeo Khandelwal. The suit property was a residential house constructed over city survey no.3254 and 3136 located at Ahilyanagar.

4. After hearing the parties, the Civil Suit came to be decreed thereby crystallizing the share of all the four parties in equal manner. The decree has attained finality. The decree was then referred for execution. During the execution proceedings, the defendant namely Ramdeo Khandelwal expired leaving behind his widow namely Kiran and a daughter namely Sonali. In the execution proceedings, an amendment was sought to bring on record widow and

daughter of deceased Ramdeo. Subsequently, present petitioner filed an application seeking her impleadment in the execution proceedings in the capacity of legal representative of her deceased son Ramdeo. The said application was opposed by the widow and the daughter of deceased Ramdeo.

5. After hearing the parties, the Executing Court rejected the said application observing that the decree could be executed even without notice to the judgment debtors.

6. Mr. S. S. Bora, learned Counsel for the petitioner has filed this petition takes exception to the order passed by the Executing Court whereby the application under Order 1 Rule 10 of the CPC is rejected. He submits that in view of the schedule referable to Section 8 of the Hindu Succession Act, 1956, mother is a class-I heir of her deceased son. He further submits that the petitioner merely seeks a share in the share of her deceased son in the capacity of his legal representative. He would submit that although the petitioner has never objected the Civil Suit and the decree passed in the suit, she wish to have a share as a legal representative of her deceased son Ramdeo to the extent of his share. Mr. Bora submits that the petitioner does not dispute the decree of partition at all.

7. The record reveals that in the meantime, the widow of deceased Ramdeo is also expired and as such, it is only the respondent no.4B/Sonali who represents the deceased Ramdeo as also deceased Kiran Khandelwal.

8. Mr. S. S. Bora, learned Counsel concludes his argument with submission that in terms of the Hindu Succession Act, it is an undisputed fact that the petitioner who is the real mother of deceased Ramdeo, needs to be heard in the execution proceedings. He would submit that the execution proceedings even otherwise could not be completed without having the petitioner as party respondent for the reason that she is in actual possession of the suit properties.

9. Mr. A. D. Ostwal, learned Counsel appearing for the respondent no.1/plaintiff is more concerned about the execution of the decree in the suit filed by him. He would submit that the rights of the stake holders are defined in equal proportion by the Trial Court. He is not concerned as to whether the petitioner shares the portion allotted to deceased Ramdeo in the capacity of his legal representative or not.

10. The record reveals that notices were repeatedly issued to respondent no.4B. Record also reveals that despite service

of notice, respondent no.4B has not caused appearance. Notice for final disposal of the Writ Petition was also issued by this Court on 18.07.2025. The said notice was also served on the respondent no.4B.

11. Mr. S. S. Bora, learned Counsel makes statement that the petitioner has even served the respondent no.4B by private mode and affidavit to that extent is also placed on record.

12. It appears from the record that the notice issued by this Court was served on the respondent no.4B on 25.08.2025. Today, none appears for the respondent no.4B.

13. It is an undisputed fact that the petitioner is the real mother of respondent no.4. She is covered by the Schedule referable to Section 8 of the Hindu Succession Act. The petitioner is merely seeking a share in the portion of her deceased son in the capacity of his legal representative.

14. In view of this, the petitioner has made out a case for interference of this Court under Section 227 of the Constitution of India. Hence, I pass the following order:

ORDER

- i. Writ Petition stands allowed in terms of prayer clause B, which reads thus:

b. That, the impugned Order dated 11.11.2024 passed by the learned 4th Joint Civil Judge Senior Division, Ahmednagar on Application below EXH.54 in Final Decree No.1/2011 thereby rejecting the Application for impleading the petitioner as party to the said proceedings, may kindly be quashed and set aside and Application below Exh.54 may kindly be allowed.

ii. Petitioner's application at Exhibit 54 in final decree no.1 of 2011 stands allowed.

iii. The Executing Court is requested to conclude the execution proceedings as expeditiously as possible and within a period of 12 months from today. Parties to co-operate.

iv. Writ Petition is disposed of. Issue Writ accordingly.

v. Rule made absolute in above terms.

(AJIT B. KADETHANKAR, J.)