IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12518 OF 2026

Suresh Shivajirao Kale and Anr ...Petitioners

Versus

Mahesh Shivajirao Kale and Ors ...Respondents

Mr. Shailendra Kanetkar, (through VC), with Pranay Kothari, for the Petitioners.

CORAM: N. J. JAMADAR, J.

DATE : 1st OCTOBER 2026

ORDER:

1. Heard Mr. Shailendra Kanetkar, the learned Counsel for the Petitioners.

2. The challenge in this Petition is to an order dated 22nd April 2026, whereby the learned Civil Judge, Pune, was persuaded to allow an Application (Exhibit"150") filed in Special Civil Suit No. 577 of 2021, to bring Abhiraj Mahesh Kale on record as the legal representative of deceased-Plaintiff No.2-Shashikala Shivajirao Kale. Plaintiff No.1 Mahesh Kale and Defendant No.1-Suresh Kale are the sons of late Smt. Shashikala-Plaintiff No.2.

3. The suit was instituted by the Plaintiffs seeking a declaration that the purported Gift Deeds in respect of the suit properties described in

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the Plaint paragraphs 1A, 1C dated 18th February 2020, and the Gift Deed dated 24th December 2020 in respect of the suit property described in paragraph 1D and the Lease Deed dated 18th February 2020 in respect of the property described in paragraph 1B, executed by Defendant No.1, in the capacity of Power of Attorney of Plaintiff No.2, in his own favour and in favour of Defendant No.2 are illegal, null and void.

4. Plaintiff No.2 passed away on 2nd October 2025. The Plaintiffs filed an application to bring Abhiraj Kale on record as the legal representative of deceased-Plaintiff No.2 qua the suit properties described in paragraphs 1B and 1C as late Plaintiff No.2 had executed a registered Will in favour of the said Abhiraj on 14th February 2018.

5. By the impugned order, the learned Civil Judge was persuaded to allow the Application opining that the said legatee under the registered Will dated 14th February 2018 deserved to be impleaded as a legal representative of the deceased-Plaintiff No.2 and the legality and validity of the said Will was a matter for adjudication at the trial.

6. Mr Kanetkar, the learned Counsel for the Petitioners would submit that Plaintiff No.1 and Defendant No.1, being the sons of late Plaintiff No.2, represented her estate, and thus, it was not necessary to bring on record the purported legatee under the Will of the year 2018, which was never disclosed by Plaintiff No.2 during her lifetime. It was

further submitted that the purported attesting witnesses to the said Will have filed Affidavits disowning the execution and attestation thereof. Thus, the learned Civil Judge committed an error in allowing the impleadment of the purported legatee, who is the son of Plaintiff No.1.

7. I find it difficult to accede to the submissions of Mr. Kanetkar. I have perused the copy of the Will. *Prima facie,* there is a bequest of the suit properties in favour of Mr. Abhiraj. The learned Civil Judge was fully justified in holding that the enquiry under Order 22 Rule 5 of the Code of Civil Procedure, 1908 ("the Code") is of summary nature, and whether the Will has been validly executed and attested was not required to be determined to the hilt, at that stage.

8. If there is a bequest in respect of the suit properties, described in paragraphs 1B an 1C in favour of Abhiraj, in view of the expansive definition of "legal representative" under Section 2(11) of the Code, Abhiraj is entitled to represent the estate of the deceased qua those properties. Moreover, if Abhiraj is construed to be be an Executor of the Will, which a fair reading of the Will indicates, only Abhiraj can represent the estate of the late Plaintiff No.2 under the provisions of Section 211 of the Indian Succession Act, 1925.

9. As the interest of the rest of the Plaintiffs does not appear to be adverse to that of the person sought to be brought on record as the legal

representative of late Plaintiff No.2, qua the properties described in paragraphs 1B and 1C, there is no impediment in impleading Plaintiff No.2A as the legal representative of late Plaintiff No.2.

10. Mr. Kanetkar, further submitted that, Mrs. Sandhya Bhosale, the daughter of late Plaintiff No.2, is also entitled to be impleaded as a party to the suit.

11. In this Petition, this Court need not delve into that aspect of the matter. In the event impleadment is sought by Mrs. Sandhya Bhosale, the trial Court may decide such a prayer in accordance with law.

12. Petition stands dismissed.

[N. J. JAMADAR, J.]