



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

WRIT PETITION NO. 3633 OF 2024

1. Shri Vitthal s/o Yashwanta Khaire,
Aged about 53 yrs, Occ. Agriculturist.
2. Shri Navnath s/o Yashwanta Khaire,
Aged about 52 yrs, Occ. Agriculturist.
3. Shri Sharad s/o Yashwanta Khaire,
Aged About 50 yrs, Occ. Agriculturist.
4. Shri Rajesh s/o Yashwanta Khaire,
Aged About 44 yrs, Occ. Agriculturist.

All 1 to 4 R/o Civil Lines, Risod,
Dist. Washim.

...PETITIONERS

...V E R S U S...

Shri Bhagwanrao s/o Ganpatrao Pawar,
Aged 60 yrs, Occ. Agriculturist,
R/o. Pawarwadi, Risod, Tah Risod,
Dist. Washim. .

....RESPONDENT

Mr. U.M. Aurangabadkar, Advocate for petitioners.
Mr. R.G. Kavimandan, Advocate for respondent.

CORAM:- M.W. CHANDWANI, J.

DATE :- 30.03.2026

ORAL JUDGMENT:

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

2. The present petition challenges the order dated

6.11.2023, passed below Exhibit 8, by the learned Ad-hoc District Judge-2, Washim, wherein the application filed by the respondent, under Order XXII Rule 3 read with Section 151 of the Code of Civil procedure (for short, "CPC"), was allowed.

3. The brief facts of the case is that, the original plaintiff Smt. Asrabai wd/o Ratan Khaire had filed a suit for partition, separate possession and damages which came to be dismissed. Thereafter, she had filed appeal before the learned District Judge. During the lifetime, Smt. Asrabai executed registered Will Deed in favour of the respondent. During pendency of the appeal, Smt. Asrabai died, therefore, the respondent filed an application for bringing his name as a legatee of the Will executed by Smt. Asrabai. The said application was objected by the petitioners before the learned District Judge. However, said application came to be allowed by vide impugned order which is impugned in this petition.

4. The contention is that, the petitioners have disputed the Will Deed, more particularly, on the ground that the respondent had no relation with Smt. Asrabai. According to learned counsel for petitioners, allowing such application will amount to accepting the respondent as a legatee of the alleged Will Deed, which is disputed

by the petitioners and without proving the alleged Will Deed valid, he cannot be allowed to be a legatee of the alleged Will Deed and the property which is precisely a subject matter of the suit.

5. With able assistance of learned counsels for the respective parties, I have gone through proviso to Rule 5 of Order XXII of the CPC, which reads thus:

5. Determination of question as to legal representative. - Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

Provided, that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.

6. It appears that the learned District Judge failed to appreciate the proviso to Rule 5 of Order XXII of the CPC which prescribes that if there is any dispute, the proper course would be to direct the subordinate Court to try the question and return the record together with evidence, if any, so that the Appellate Court can take

decision on the said material.

7. In view of the discussion above, the order passed by the learned District Judge, Washim does not stand and needs to be set aside. Accordingly, the order dated 6.11.2023 is set aside. The matter is remanded back to the learned District Judge, Washim for passing an appropriate order afresh, after considering the proviso to Rule 5 of Order XXII of the CPC. The petition is disposed of accordingly.

(M.W. CHANDWANI, J.)

Belkhede PS