

S. C. S. No. 161/1995

(Smt.Sitabai Narayan Deshmukh)

... Plaintiff

Jayram Bhalerao

V/s.

Shri.Jaywant Balkrishna Deshmukh and Ors. ... Defendants

COMMON ORDER BELOW EXH. 165 and 167

Both applications arise due to death of plaintiff. Defendant Nos.1 to 8 contends in their application (Exh.165) that plaintiff Jayram Bhalerao is died on 10/06/2016. So the suit is abated. On the contrary it is averred in the application (Exh.167) that before his death plaintiff Jayram Bhalerao executed will deed and bequeathed suit properties in favour of intervenor/ proposed plaintiff. Therefore she is legal representative of Jayram Bhalerao and right to sue survive.

2. It is avered that present intervenor Vaishali Vishwanath Bhalerao is daughter in law of the deceased plaintiff Jayram Bhalerao. He bequeathed the suit properties in her favour by executing Will deed dt.06/03/2014. Thus suit properties are transferred in her favour. So, she became the owner of the suit properties and she has right to proceed with this suit. Therefore, according to her she is legal representative of Jayram Bhalerao.

3. I have gone through the applications and say. I have also gone through the written notes of argument filed by the both side. Before going into merit of the applications it is useful to state the history of this case.

4. History of the case in brief:-

i) Deceased Sitabai Narayan Deshmukh filed present suit in the year 1995 for partition and separate possession. Parshuram Deshmukh was the original owner of the suit properties. He had two sons namely Narayan and Balkrishna. Sitabai married with Narayan in the year 1938. Narayan died in the year 1942 and his father Parshuram died in the year 1944. After death of Parshuram the suit properties were in the hands of Balkrishna.

ii) Out of the suit properties property mentioned in schedule A of the plaint was acquired by the Government for the purpose of development of New Mumbai and compensation in the terms of money was allotted. By this suit deceased Sitabai has claimed her share in the suit properties.

iii) On 30-06-2000 this suit was partly decreed. But the Judgment and decree was challenged in Honble District Court vide Regular Civil Appeal No.113/2000. During pendency of the appeal Sitabai died and Jayram Bhalerao moved an application before the Honble District Court to implead him as the legal heir of deceased Sitabai on the ground that she executed will and bequeathed her share in the suit properties in his favour. His application was rejected by the Honble District Court. He challenged the said Order and Honble High Court allowed his application and substitute him as plaintiff on the place of deceased Sitabai. Thereafter the suit has been remanded back to this Court to decide the issue of genuineness of the will which allegedly executed in favour of Jayram Bhalerao.

5. Heard both side advocates. I have gone through the written notes of argument. Advocate of defendants Mr. G.N.Patil has submitted

that the plaintiff Jayram Bhalerao is no more. Therefore, suit is abated and after abatement of the suit the court has no jurisdiction to substitute legal heir by way of impleadment of necessary parties. It is further argued by him that at the time of execution Will, Jayram Bhalerao had no right over the suit properties. Therefore he had no right to execute will. To support his argument he has relied on case of Jayalaxmi Janardhan Walawalkar Vs. Lilachand Laxmichand Kapasi and Ors. reported in 1998(3) Mh.L.J. 618 and Cherichi Vs. Ittianam and Ors. AIR 2001 Kerala 184. On the other hand Mr.Swapnesh Gharat advocate of plaintiff has urged that the Will Deed executed in favour of Vaishali Bhalerao is registered. It is not challenged by anyone. She is legal representative of deceased Jayram Bhalerao. To support his argument he has relied on the decisions of Hon'ble High Court in case of Roni Adi Tarapurwala and Anr. Vs. Dishaw Adarji Tarapurwala and Ors. Second Appeal No.551/2010 decided on 11/04/2012 and Jaladi Suguna Vs. Sarya Sai Central Trust and Ors. Civil Appeal No.3375/2008 Hon'ble Supreme Court decided on 05/05/2008.

6. It is not disputed that Sitabai married with Narayan. Balkrishna was the real brother of Narayan. Narayan died in the year 1942 during life time of his father namely Parshuram. Parshuram died in the year 1944. After death of Narayan and Parshuram the suit properties were in the hands of Balkrishna. Thus, it is clear that the Narayan and Parshuram were the members of joint Hindu family alongwith their father Parshuram. It is further clear from the pleadings of the parties that suit property No.A which is shown in schedule of the plaint out of the suit properties acquired by the State Government for development of New Town City of Mumbai.

7. Now the property No.B and C are in actual possession of the

parties. Earlier this Court partly decreed the suit and held that Sitabai has share in property No.B and C. During the pendency of appeal Sitabai died and instead of her Jayram Bhalerao impleaded as a plaintiff in the present suit since suit properties bequeathed by the Sitabai in his favour by executing Will Deed. While challenging his implication in the present suit The Hon'ble High Court held that whether will deed is genuine or not is a different question. Husband of Sitabai was co-parcner of Hindu joint family. Being a wife Sitabai got inheritance right. Therefore, she had the interest in the suit properties by inheritance. She executed Will deed in favour of Jayram Bhalerao. Though it has been alleged by the defendants that it is not genuine but that was the different question. As per his contention she bequeathed suit properties in his favour by executing Will Deed. Therefore, the Hon'ble High Court impleaded him as a plaintiff in the present suit. Thus from the Order of the Hon'ble High Court it can be seen that that on the basis of the will the Jayram Bhalerao got right to proceed with this suit. Now Jayram Bhalerao is no more. The intervenor is praying to implead her as plaintiff on the place of Jayram Bhalerao on the ground that suit properties are bequeathed in her favour by the document of wiil.Copy of will is filed on recod. Thus after death of Jayram Bhalerao the present intervenor has claimed interest in the suit properties by way of Will deed which is allegedly executed by the Jayram Bhalerao in her favour. Again defendants have raised objection that the Will deed executed in favour of Jayram Bhalerao is a bogus and false, therefore the will executed in favour of present intervenor by the Jayram Bhalerao is not valid. However, the genuineness of the said document is a different question, which required detail evidence. The question of execution of will deed is a mix question law and fact. To decide this question detail evidence is required. The Hon'ble High Court while deciding the appeal from the Order No.349/2004 in the present case allowed to implead the Jayram Bhalerao as a plaintiff. Thus, if it is proved that Sitabai Narayan

Deshmukh bequeathed the suit properties in favour of Jayram Bhalerao then Jayram Bhalerao would acquire interest in the suit properties and he would get right to transfer his interest in the suit properties. Therefore transfer in favour of present intervener by the Jayram Bhalerao by way of Will deed would have been as per law.

9. In the present case in view of order of Hon'ble High Court Jayram Bhalerao impleaded as a plaintiff in the present suit after death of original plaintiff Sitabai on the basis of Will deed which is executed by the Sitabai in favour of Jayram Bhalerao. Now the Jayram Bhalerao is no more and before his death he executed Will deed of suit property in favour of present intervener. Thus, the present intervener has interest in the suit properties by way of Will deed.

10. Therefore in my opinion the present intervener deserves to be impleaded as a plaintiff in this suit. Therefore, application of plaintiff at Exh.167 deserves to be allowed. Whereas application of defendant at Exh.165 is rejected. Accordingly, I proceed to pass the following order.

:: O R D E R ::

1. Application Exh-167 is allowed.
2. The present intervener Vaishali Vishwanath Bhalerao be impleaded as plaintiff in the present suit.
3. Application Exh.165 is rejected.

Panvel
Date-14/07/2017

Sd/-
(Rajesh K. Khomane)
Jt. Civil Judge, S. D. Panve