

L.A.No. 103/2020  
S.D.O. Vs. Durgabai +1  
CNR No. MHWS02000524-2020

**ORDER BELOW EXH.51.**

Present application is filed by third party applicant Pratik Ramesh Gawande to bring him on record as a legal heir of deceased respondent No.1 Durgabai.

2. In short, it is the contention of applicant that deceased respondent No.1 Durgabai was his grandmother. She died on 25/11/2021. Durgabai executed will-deed on 18/03/2021 in favour of the applicant. Said fact is also deposed by Durgabai in her affidavit. As per the said will-deed Durgabai expressed her will that, the compensation amount of her share shall be paid to the applicant. Therefore, it is necessary to add him in the petition as the legal heir of deceased Durgabai. Already other legal heirs of deceased Durgabai is on record. Hence, prayed to allow the application.

3. Respondent No.2 filed say and opposed the application contending that Durgabai never executed will-deed on 18/03/2021 in favour of applicant. She had not filed any affidavit regarding the same. Already other legal heirs of Durgabai are on record. Therefore, it is not necessary to join the present applicant in the matter. Interest of Durgabai is protected by her legal representatives who are on record. Forged will-deed is prepared by the applicant. Unless and until will-deed is proved and probate is granted, the legatee does not get any right, title or interest in the property. Applicant is not necessary party

to the proceeding. Hence, prayed to reject the application.

4. Heard both the parties. Perused the rival contentions of the parties. It is argued by Advocate Biyani for respondent No.2 that third party applicant has claimed his right on the basis of will-deed alleged to be executed by Durgabai. But the third party applicant had not applied for probate and no probate is granted in his favour. Therefore, unless and until the probate is obtained, the applicant is not having any right in the suit property. Other legal heirs of Durgabai are already on record. Therefore, it is not necessary to make the third party applicant as a party to the matter. In support of his argument he relied on the Case Law reported in 2001(2)ALL MR 574, Babasaheb Yeshwant Anandrao Patil Vs. Smt. Manjulabai Balwant Gaikwad.

5. On the contrary, it is argued by Advocate Dhavale for third party applicant that Durgabai has executed will-deed in favour of third party applicant. Therefore, he is interested party in the matter and in the amount of compensation which Durgabai was entitled to get. Therefore, he is necessary party to the proceeding. The case law relied by the respondent No.2 does not apply to the present matter. Hence, prayed to reject the application.

6. Upon hearing both the parties, it is not disputed that Durgabai is died and her other legal heirs are already on record. The only dispute between the parties is regarding the addition of third party in the matter, who came before the Court on the basis of alleged will-deed executed by Durgabai. Whether Durgabai executed the will-deed in favour of the applicant or not ? is the matter of trial.

Whether the will-deed of Durgabai is her last will-deed ? can be considered only after full fledged trial. At this initial stage when no evidence regarding the execution of will-deed is there, it can not be said that alleged will-deed is forged or genuine. Therefore, the third party applicant can not be kicked out at this stage. On the contrary, the copy of will-deed goes to show that Durgabai expressed her will that whatever the compensation amount to which she was entitled to get shall be given to the third party applicant. It goes to show that third party applicant is having interest in the amount of compensation to which Durgabai was entitled to get. Therefore, he is necessary party in the matter. Unless he is added as a party to the matter, the rights of the parties cannot be decided effectively.

7. So far, contention of respondent No.2 regarding obtaining of probate on the basis of will is concerned, on perusing the above referred case law it appears that in that matter the probate proceeding was initiated on the basis of will. But during the pendency of that proceeding, main petitioner Manjulabai was died and therefore, on the basis of will-deed executed by Manjulabai the third party applicant came before Court to add him as a party. On the basis of those facts the Hon'ble High Court clarified that in view of Section 283 read with Section 213 of the Indian Succession Act unless the probate is obtained on the basis of will, third party applicant can not be added as a party to the probate proceeding.

8. But in matter before me the facts are different. This is not a probate proceeding. Therefore, the provisions of Section 283 of the

Indian Succession Act will not apply. Moreover, as per Section 213 read with Section 57 (1)(a) and (b) of the Indian Succession Act the probate is necessary only in case if the will-deed is executed within the territories of original jurisdiction of the Hon'ble Bombay High Court or if properties are situated within the territorial jurisdiction of Hon'ble Bombay High Court. But both these conditions does not fulfill in present matter. The will-deed is executed outside the original jurisdiction of the Bombay High Court and the property is not situated within the original jurisdiction of the Hon'ble Bombay High Court. Therefore, I respectfully submit that the respondent No.2 will not get the benefit of above referred case law.

9. In view of above discussion as third party applicant is claiming right on the basis of alleged will-deed executed by Durgabai, it is necessary to bring him on record as a legal heir of deceased Durgabai. Hence, I pass the following order-

**ORDER**

1. Application is allowed.
2. Petitioner is directed to amend the petition and add the third party applicant as the legal heir of deceased Durgabai.
3. Concerned clerks are directed to take entry of addition of party in concerned institution register and in C.I.S.

Date:- 13/07/2022.

( R.P.Kulkarni)  
2<sup>nd</sup> Jt. Civil Judge (Sr.Dn.),  
Washim.

CERTIFICATE

I affirm that the contents of this PDF file order are same word to word, as per original judgment.

- 1) Name of Stenographer :- S.V.Dere (Stenographer-III)
- 2) Name of Court :- 2<sup>nd</sup> Jt.Civil Judge (S.D.), Washim.
- 3) Date :- 13/ 07 /2022
- 4) Order signed by the presiding officer on :- 13/ 07 /2022
- 5) Order uploaded on :- 14/ 07 /2022