



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

CIVIL APPLICATION NO. 251 OF 2025

IN

SECOND APPEAL NO. 247 OF 2015

(PADMAKAR S/O NARAYAN BHONDE AND ANOTHER

VS

DURGA W/O ARUNRAO DATIR AND OTHERS)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
Judge's order
and Registrar's orders.*

Court's or

Mr. V. G. Bhamburkar Advocate for appellant.
Mr. Shrijeet Joshi and Mr. V. R. Mishra, Advocate for respondent No.1.

CORAM : ROHIT W. JOSHI, J.

DATED : APRIL 21, 2026

- 1) The applicant in the civil application had sought substitution as legal representatives on the basis of Will deed purportedly executed by deceased respondent No.3 on 29/07/2024. The respondent Nos.1, 4 and 5 are daughters of deceased respondent No.3.
- 2) The learned advocate for the respondent (daughters) disputed execution of the Will deed dated 29/07/2024 purportedly executed by respondent No.3 in favour of the present applicants/appellants.
- 3) In view of the aforesaid, vide order dated 15/04/2025 this Court had directed the learned trial Court to conduct an inquiry as is contemplated under Order 22 Rule 5 of the Code of Civil Procedure and furnish findings and reasons along with the evidence

recorded to this Court. The learned trial Court has returned the findings along with evidence expressing an opinion that the Will is not proved.

4) Mr. Bhamburkar, learned advocate for the applicants contends that the opinion of the learned trial Court is not certified by the learned first appellate Court as per Clause 470 of the Civil Manual. He therefore, contends that the matter should be remitted to the learned first appellate Court for certification of the view expressed by the learned trial Court.

5) Learned advocate for the respondent's (daughters) opposes the contention. He argues that Clause 470 of the Manual is required to be read in conjunction with Clause 468 and 469. The contention of learned advocate is that it is only in cases of remand under Order 41 Rule 23 or reference of issues for trial under Order 41 Rule 25 or recording of additional evidence under Order 41 Rule 27 by High Court in Second Appeal that procedure as contemplated under Clause 470 is required to be followed.

6) Having gone through the provisions of Clauses 468 to 470, I am in agreement with the contention raised by the learned advocate for the respondent's daughters. An inquiry under Order 22 Rule 5 is for limited purpose to enable the Court to permit a person to represent the estate of a deceased party to the proceeding. Substantive rights of parties are not decided or adjudicated while deciding an application

under Order 22 Rule 5 of CPC. As against this, the findings recorded pursuant to order passed under Order 41 Rule 25 are required to be specifically assailed since rights are decided while deciding such issues. The preliminary objection that unless the findings are certified they cannot be looked into, is therefore rejected.

7) Mr. Bhamburkar, also places reliance on judgment of Hon'ble Supreme Court in the case of **Swami Vedvyasanand ji Mahara (D) Thr. Lrs vs. Shyam Lal Chauhan and others** reported in **2024 SCC OnLine SC 683** and contends that the question as regards the appellants along with respondents daughters should be considered to be legal representatives of deceased respondent No.3 is required to be adjudicated by this Court and that the opinion expressed by the learned trial Court cannot be accepted as it is.

8) I am in agreement with the contention raised by Mr.Bhamburkar. Learned advocate therefore was called upon to advance submissions with respect to correctness or otherwise of the findings recorded by the learned trial Court. Learned advocate sought adjournment to advance submissions on merits of the matter. It needs to be stated that the matter was listed before this Court on 17/04/2026, it was substantively argued and the hearing was adjourned at the request of learned advocate Mr.Bhamburkar.

- 9) In order to afford one more opportunity to the learned advocate Mr.Bhamburkar to argue the matter on merits, adjournment is granted as a last chance.
- 10) Stand over to **04/05/2026**.

(ROHIT W. JOSHI, J.)