

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

WRIT PETITION NO. 1051 OF 2015

Balaji Ranjeet Thakar ... Petitioner

VERSUS

Ranjeet Pandhari Thakar
& others ... Respondents

.....
Mr. N.V. Gaware, Advocate for petitioner

...
CORAM : RAVINDRA V. GHUGE, J.

DATED : 9th FEBRUARY, 2015

PER COURT :

1. I have heard Shri Gaware, learned Advocate for quite some time.

2. Grievance is that an application Exhibit 23 seeking addition of a party dated 21-06-2014 in R.C.A. No. 133 of 2010 has been allowed by the impugned order dated 07-10-2014. The petitioner is the original defendant in R.C.A. No. 73 of 2008 which was filed by Ranjeet Thakar for declaration as regards title and ownership of the property. By judgment dated 26-03-2010, the suit was decreed.

3. R.C.A. No. 133 of 2010 preferred by the defendant Rajendra Thakar had impleaded Ranjeet as first respondent. Ranjeet passed away on 05-03-2014. It is in these circumstances, that the application below Exhibit 23 was filed by the widow of Ranjit.

4. The petitioner submits that the application filed by the widow Mankabai, should not have been entertained as she was not a party to the suit. She claims to have inherited the property of Ranjeet on the basis of a will-deed dated 22-05-2008. Attempting to be impleaded as a respondent in the Appeal under Order I Rule 10 of the Code of Civil procedure, by virtue of the said will-deed, would amount to expanding the scope of the appeal. The impugned order has caused grave injustice to the petitioner.

5. Having considered the submissions of the learned Advocate and having gone through the petition paper book, I do not find that the impugned order could be termed as perverse or erroneous. Ranjeet was the plaintiff before the Trial Court. He claimed to be title holder of the suit property. He might have executed a will-deed dated 22-05-2008 which, in my view did not mandate appearance of Mankabai in the said suit proceedings when Ranjit himself was prosecuting the suit.

6. In the appeal filed by Rajendra Thakar, Ranjeet was naturally impleaded as the first respondent since he was alive and was the original plaintiff. The contention of the petitioner that Mankabai should have appeared in the suit or she should have appeared in the appeal proceedings prior to the death of Ranjit, is fallacious.

7, A will-deed could have its force and would be executable only when the author of the will has passed away. The original litigation was between Ranjit and the defendants and Mankabai as his wife was not required to be plaintiff No. 2 in the said suit since at the time of the institution of the suit, she had not inherited the property.

8. Shri Gawari, learned Advocate has relied upon paragraph 15 of the judgment of the Apex Court in the matter of ***Kasturi Vs. Iyyamperumal***, reported at 2005 (6) SCC 733 which reads as under :-

“15. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 of the CPC "all the questions involved in the suit" it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff/appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view,

therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff/appellant on one hand and Respondent Nos. 2 & 3 and Respondent Nos. 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of the respondent Nos. 1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinafter, the respondent Nos. 1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale”

9. I do not find that the conclusions arrived at by the Hon'ble Supreme Court in paragraph 15, which has been relied upon by the petitioner, would in any way assist the petitioner since the facts are distinguishable.

10. In the light of the above, I do not find that the matter could be termed as perverse or erroneous. The petition being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)