

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.19 OF 2015

- 1) Pandit Suryaji Kapse
Age-70 years, Occu:Agril.,
 - 2) Yashodabai Kishan Kapse,
Age-90 years, Occu:Household,
- Both R/o-Pusegaon, Tq-Sengaon,
Dist-Hingoli.

...APPLICANTS

VERSUS

Ganpati Namaji Vaidya,
Age-75 years, Occu:Agriculturist,
R/o-Pusegaon, Tq-Sengaon
District-Hingoli
and others.

...RESPONDENTS

...
Mr. Surendra V. Suryawanshi Advocate for
Applicants.

...

CORAM: A.I.S. CHEEMA, J.

DATE : 11TH FEBRUARY, 2015

ORDER :

1. Heard learned counsel for Applicants. The Applicants are the original Defendant Nos.7 and 11 in Regular Civil Suit No.2 of 2008 (old R.C.S. No.65 of 1978) pending before the Civil Judge, Junior Division, Sengaoon. The present Revision Application has been filed challenging the common order passed by the trial Court below Exhibit 159, 161, 216 and 217.

2. Learned counsel submitted that in this suit which was filed by deceased Gyanuji Amruta Waghade, sole Plaintiff, issue of tenancy was raised by the Defendants, which was referred to the Tenancy Court and with the chequered history, matter went up to the Hon'ble Supreme Court in S.L.P. No.18374 of 2004. The question of tenancy has been decided against the Defendants. When the S.L.P. was pending, the original Plaintiff died on 26th April 2007. The Defendants moved application

to bring legal heirs of the original Plaintiff on record in the Hon'ble Supreme Court but as can be seen from document at Page No.20, the application was rejected on 11th December 2012. Subsequently, the Hon'ble Supreme Court dismissed the S.L.P. on 8th May 2014 holding the same to be incompetent.

3. It is submitted that in view of Order XXII Rule 3(2) of the Code of Civil Procedure, 1908 (for short "C.P.C.") the legal heirs of Plaintiff were not brought on record in the trial Court and the suit abated after 90 days. The counsel argued that after the disposal of S.L.P., now one Ganpati Vaidya claiming to be earlier power of attorney of Plaintiff has filed application on 28th February 2013 claiming that he was the legal heir in view of Will executed by original plaintiff. The copy of the application (Exhibit 159) is at Page No.23. It has been submitted that one Bhagirathabai Waghade and others have also filed application Exhibit 216

(copy of which is at Page No.28) claiming to be natural heirs of the original Plaintiff and that they were the legal heirs, disputing the claim of the Ganpati Vaidya. Thus, according to the counsel, there are two set of claimants seeking condonation of delay wanting to be brought on record as legal heirs of original Plaintiff. According to him the applications did not make request for setting aside abatement. He submits that there has been delay of seven years, for which no application for setting aside abatement has been filed, and still the trial Court has proceeded to pass order to initiate inquiry under Order XXII Rule 5 of C.P.C. to decide which set of claimants should be brought on record as legal heirs of Plaintiff. The counsel referred to the observations of the trial Court to question the order passed. The counsel relied on the following reported cases:

(I) Amita Kaushish and others vs. Sanjay

Kaushish and others, (1996) 7 S.C.C. Page No.19,

(II) Khemraj Ratanlal Sancheti and others vs. Vasant Madhaosa Vyavhare and another, 1981 Mh. L.J. Page No.200,

(III) Madanlal Agarwal vs. Smt. Kamlesh Nigam, A.I.R. 1975 Madhya Pradesh 132(1).

. The learned counsel for Applicants relying on above Judgments, submits that even if there was a status quo order operating, collateral steps in the matter could have been taken by the parties and thus legal heirs could have been brought on record in time and the trial Court was not justified in passing the impugned order. Thus, he submits that the present Revision may be entertained.

4. Going through the matter, it is apparent that this is an old suit of 1978 in which the Plaintiff passed away before he could see the suit

being decided where he claimed ownership and possession of the suit land. The copy of the order at Exhibit B (Page No.19) shows that there was order of the Hon'ble Supreme Court that status quo as operating on the date of order shall be maintained. The order of the trial Court shows that in view of such orders, the trial Court had stayed further proceedings. The Rulings relied on by the learned counsel, no doubt, say that collateral steps can be taken even when there is stay. However, the trial Court appears to have considered the developments and stay which was operating and found that sufficient cause to condone delay was made out and looking to the rival claims being made by Ganpati Vaidya on the basis of Will and Bhagirathabai Waghade and others on the basis of being natural heirs, has directed that inquiry under Order XXII Rule 5 of C.P.C. to be made to determine the question as to who are the legal representatives. When the Court condones the delay to permit the legal heirs to be

brought on record, it would include setting aside the abatement and thus I do not find that the Revision raises any ground to entertain the same as no illegality appears to be on record.

5. There is no substance in the Revision and the admission of the Revision Application is declined. Revision Application stands rejected.

[A.I.S.CHEEMA,J.]

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