

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

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907 CIVIL REVISION APPLICATION NO. 163 OF 2011

SUMANBAI TONGAL PATIL

VERSUS

HASAN BAJAN KHATIK, DIED THR. L.RS. SK. YUSUF HASAN
KHATIK AND ORS

...

Advocate for Petitioner : Mr. Mantri Ramesh R.
Advocate for Respondents 1-b To 1-h, 1-a, 2-d to 2-f
and 3: Mr. C.R.Deshpande & Mr. V. P.Rage

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CORAM : S. V. GANGAPURWALA, J.

DATE : 22nd September, 2015

PER COURT :

1. The present revision is filed against the rejection of application Exh.134 i.e.the application filed by the defendant for abatement of the whole suit on account of non bringing on record the legal heirs of deceased Defendant No.1-b, Yashodabai.

2. Mr. Mantri, learned counsel appearing for the appellant submits that in absence of legal heirs of deceased, the branch of Narayan is unrepresented. The suit for specific performance in its entirety stands abated, more particularly in view of the contention of the plaintiff that the deceased Deoram

executed agreement for sale, for and on behalf of all the members of a joint family. This aspect has not been considered by the Court in its correct perspective. This court, in an earlier revision, had remitted the matter back to the trial Court to decide the application Exh. 134 afresh in the light of observations made by this Court in the earlier revision. However, the learned Judge failed to consider the said observation made by this Court so also did not consider the judgments referred to before him in its correct perspective. The learned Judge, in its order, has observed that the suit is already dismissed against the defendant 1B Yashodabai as abated. In the light of that the whole suit stood abated. The relief for specific performance could not be granted as it is a joint relief.

3. The learned counsel further submits that the learned judge has erroneously observed in the order, more particularly in paragraph 18, that other legal representatives of deceased Deoram are already on record. The learned counsel submits that the deceased Deoram was represented by his legal heir, Defendant

No.1A-Sarsabai alias Shardabai wd/of Deoram. The said defendant 1A has died on 06.02.1999. As such, the branch of Deoram is also not represented. There was no impediment to allow the application Exh.134 in toto.

4. Mr. Deshpande, the learned counsel submits that the application Exh.136, filed by the defendants seeking amendment in the written statement to the effect that as the legal representatives of Yashoda are not brought on record, the suit is bad for non-joinder of necessary parties, is allowed. The court will be required to determine the aspect of the absence of the legal heirs of Yashodabai while deciding the suit. According to the learned counsel, no illegality has been committed. Even, an alternate prayer for refund of amount/compensation is made, which can be granted.

5. With the assistance of learned counsel, I have gone through the judgment and I have considered the submissions.

6. It is the contention of the learned counsel for

the applicant that even Deoram's branch is not represented and defendant 1A Smt. Sarja alias Shardabai who was brought on record as legal heir of deceased Deoram has also died on 06.02.1999 was not before the trial Court. In light of that the trial Court has observed that the other legal heirs of Deoram are on record. It is for the petitioner to bring it to the notice of the trial Court about the deceased Defendant 1-A and its effect upon the suit.

7. The relief of recovery of amount is also claimed. It is trite that the release of one joint promisor does not *ipso facto* release the other joint promisor. As such, to that extent, the suit cannot be said to abate as a whole. What would be the effect of the death of Yashodabai and non representation of the branch of Narayan upon the relief of specific performance, it is for the court to decide at the time of final trial of the suit, which aspect the court shall consider and decide at the time of final trial of the suit. The suit cannot be abated in part.

8. As the court would be required to consider the

effect of the abatement of the suit as against Yashodabai, as it is stated that even purshis is filed that the plaintiff does not wish to bring on record the legal heirs of deceased Yashodabai and the branch of deceased Narayan going unrepresented, naturally, the Court will have to give a dictum as to its effect on the relief of specific performance qua the other defendants.

9. Considering the above, no interference is called for. Civil Revision Application is disposed of with aforesaid observations and directions. No costs.

(S. V. GANGAPURWALA, J.)

JPC