

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.994 OF 2014

Murlidhar Ramchandra Patil : Petitioner.
Versus
Nathu Kashiram Pawar
since deceased through LRs
Prakash Nathu Pawar and ors. : Respondents.

Mr. P. B. Shah i/by Mr. Kayval P Shah for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 07th January 2015

P.C.

1 The writ jurisdiction of this Court is invoked against two orders both dated 28/10/2013. By the first order the application (Exhibit 62) for condonation of delay in filing the application for bringing the heirs of the original Plaintiff on record came to be allowed, and by the second order passed on Exhibit 54 the applicants were allowed to amend the plaint so as to bring them on record and also seek consequential reliefs.

2 The suit in question being Special Civil Suit No.20 of 2008 was filed by the original Plaintiff one Nathu Kashiram Pawar. The reliefs sought in the suit were a declaration that the sale deeds executed in favour of the Defendant Nos.1 and 2 in respect of the suit properties 1A and 1B are hollow, illegal and have been executed as a consequence of fraud and are therefore not

binding on the Plaintiff. The second relief sought was that the possession of the suit properties 1A and 1B be handed over to the Plaintiff from the Defendants. The rest of the prayers are not material for consideration of the above Writ Petition. It seems that the original Plaintiff Nathu Kashiram Pawar died on 11/6/2010. It is thereafter that the application (Exhibit 62) came to be filed for condonation of delay in filing the application for bringing the heirs of the original Plaintiff on record. The reasons mentioned in the application commended acceptance to the Trial Court which was accordingly pleased to condone the delay. The heirs of the original Plaintiff had also filed Application (Exhibit 60) for setting aside the abatement which was also allowed by the Trial Court by an order also passed on 28/10/2013.

3 The application (Exhibit 54) which as indicated above was for amendment of the plaint so as to bring the heirs of the original Plaintiff Nathu Kashiram Pawar on record and for amendment in the plaint thereafter came to be considered. In the said application the details about the heirs of the said Nathu Kashiram Pawar have been mentioned. The reference is made to the sons and daughters of the said Nathu Kashiram Pawar as also the heirs of one Tarabai who was the daughter of Nathu Kashiram Pawar who has expired. The said heirs were sought to be brought on record. By the said application (Exhibit 54) the son Sharad had also averred that the said Nathu Kashiram Pawar had executed a Will Deed in his favour dated 27/4/2010 which was

registered and in view of the said Will Deed he has become an absolute owner of the suit properties. Hence in the said application (Exhibit 54) the proposed Plaintiff No.1 has consequentially prayed for a declaration that he has become an absolute owner of the suit properties.

4 The said application (Exhibit 54) was replied to on behalf of the Defendant i.e. the Petitioner herein. It is significant to note that in the reply it has been stated by the Defendant/Petitioner that if at all the Court comes to a conclusion that the said application deserves to be allowed, then costs of Rs.5000/- may be saddled on the proposed Plaintiffs. Significantly in the reply the status of the proposed Plaintiffs as being the heirs of the original Plaintiff Nathu Kashiram Pawar was never questioned. The Trial Court has by the second impugned order dated 28/10/2013 allowed the said application (Exhibit 54).

5 It is the contention of the learned counsel appearing on behalf of the Petitioner that the Trial Court without conducting an inquiry under Order XXII Rule 5 of the Code of Civil Procedure, has mechanically allowed the said application . The learned counsel for the Petitioner would further contend that the nature of the suit would change in view of the amendment sought whereby the proposed Plaintiff No.1 is claiming a declaration in his own favour, and therefore, the amendment could not have been permitted. In support of the

said contention the learned counsel for the Petitioner sought to place reliance on the judgment of this Court reported in 2012(5) Bom. C.R. 37 in the matter of Roni Adi Tarapurwala and anr v/s. Dinshaw Adarji Tarapurwala since deceased through LRs and ors.

6 In my view, it is not possible to accept the said contention of the learned counsel for the Petitioner. It is required to be noted that in the reply affidavit, the fact that the Applicants i.e. the proposed Plaintiffs are the heirs of the original Plaintiff Nathu Kashiram Pawar was never disputed. Hence there was no warrant for the Trial Court to enter upon an inquiry as to who are the heirs of the original Plaintiff. As indicated above in fact in the reply the Defendant contended that in the event the application is to be allowed, then costs of Rs.5000/- be imposed on the proposed Plaintiff. The judgment of this Court (supra) has therefore no application.

7 In so far as the second contention is concerned, the proposed Plaintiff No.1 relies upon the registered Will Deed executed by his father bequeathing the suit properties to him and it is on the said basis, he is claiming the relief in the said suit. The said suit as originally filed was for a declaration in respect of the sale deeds executed by the Defendants and also seeking possession from the Defendants. The cause for incorporating the relief which is now incorporated by way of amendment is on account of the death of the

original Plaintiff Nathu Kashiram Pawar and the bequest of the properties made in favour of the proposed Plaintiff No.1. The proposed Plaintiff No.1 was obviously required to set up a title in himself so as to claim the relief which was sought in the original suit filed by the original Plaintiff Nathu Kashiram Pawar.

8 In my view, therefore, there is an error of jurisdiction or any other illegality or infirmity in the orders passed by the Courts below for this Court to interfere in its writ jurisdiction. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]