

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1218 OF 2015

M/s. Krishnakumar Jethabhai	..	Petitioners
VS.		
Nihalchand Nathmalji (HUF) by its Manager & Karta Kalidas Nihalchand & Ors.	..	Respondents

Mr. Nilesh Modi with Mr. Vikram N. Walawalkar i/b. M/s. Rustamji &
Ginwala for Petitioners.
Mr. Lalit V. Jain for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE: 22 JUNE 2015

P.C. :-

1] This petition is directed against order dated 14 January 2015 made by the Small Causes Court below Exhibit 60. By the impugned order, the plaintiff no. 2 has been permitted to join himself in prosecuting notice no. 211 of 1994.

2] The suit in the present case was instituted in the year 1978. Upon realisation that the same was instituted against a dead person, i.e. the defendant no. 1, the plaintiff no. 1 took out notice no. 211 of 1994 for deleting the name of the said defendant no. 1 and to substitute in its place the names of legal heirs of the said defendant no. 1. Notice no. 211 of 1994 could not be disposed of, on account of several events which have been referred to in

paragraphs 1 and 2 of the impugned order. Suffice to note that notice no. 211 of 1994 is even today, pending consideration.

3] The plaintiff no. 2 claims that the suit property was conveyed to him under a Deed of Conveyance dated 16 September 2005. Based upon, the plaintiff no. 2, by application at Exhibit 60, seeks to join himself and pursue notice no. 211 of 1994. By the impugned order, this is all that the learned Small Causes Court has allowed the plaintiff no. 2 to do. The learned counsel for the petitioners however submits that there are several admissions which have been recorded in the course of deposition to the effect that the suit was instituted against a dead person. On the basis of said admissions, the learned counsel contends that the suit itself is rendered untenable. In such circumstances, the learned counsel for the petitioners contends that there was no question of affording the plaintiff no. 2 opportunity of joining in the prosecution notice no. 211 of 1994. Reliance was placed upon the decision of the Apex Court in the case of *Uttam Singh Dugal and Co. Ltd. vs. Union Bank of India & Ors.*¹ and in the case of *Pransukhlal Mafatlal Hindu Swimming Boat Club Trust & Ors. vs. Vasant Joshi & Ors.*² in support of the proposition that under Order 12 Rule 6 of the CPC even a decree can be made on basis of admissions.

1 AIR 2000 SC 2740

2 AIR 2004 Bombay 270

4] Having considered the contention of the learned counsel for the petitioners and perused the record, in my judgment, there is no reason to interfere with the impugned order. The impugned order is neither vitiated by any jurisdictional error nor by any perversity, either of fact or approach. In fact all that the impugned order has done is to permit the plaintiff no. 2, who is stated to have purchased the suit property under a Conveyance, to join in the prosecution notice no. 211 of 1994.

5] The decisions upon which reliance was placed by and on behalf of the petitioners, appear to have no nexus with the controversy involved. Even though, there is no dispute that the defendant no. 1 was not living at the stage when the suit was instituted, that by itself, is no reason to hold that the suit was itself untenable. In any case, in view of pendency of notice no. 211 of 1994, it would be quite premature for the Small Causes Court to have accepted such a contention. The contention was therefore rightly rejected.

6] Further, Order I Rule 9 of the CPC provides that no suit shall be defeated by the reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in

controversy so far as regards the rights and interests of the parties actually before it. Besides, under Order 1 Rule 10(2) of the CPC the Court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the question involved in the suit, be added. Thus, the powers of the civil Courts, particularly in such procedural matters are quite wide.

7] Besides as noted earlier, notice no. 211 of 1994 is yet to be decided. All that the impugned order has done is to permit the plaintiff no. 2 to join him the prosecution in notice no. 211 of 1994. There is accordingly no reason to interfere the present petition. This petition is dismissed. There shall be no order as to costs.

8] The learned counsel for the petitioners, in the context of certain observations in the impugned order dated 14 January 2015 submitted that some statements which are attributed to the petitioners or his counsel, were never made or in any case were

incorrectly recorded. It is settled position in law that such a grievance is required to be made before the same Court in the first instance. Accordingly, if a proper application is made by the petitioners in this regard, same will be considered by the Small Causes Court in accordance with law. The observations have no bearing upon the merits of the impugned order. Further, it is clarified that since the original suit is of the year 1978, the same need not be unduly protracted. In fact the Small Causes Court is directed to dispose of the said suit as expeditiously as possible and in any case within a period of six months from today.

9] The learned counsel for the petitioners seeks stay upon the order made today, on the ground that the petitioners would like to take recourse against the same before the Hon'ble Apex Court. Considering that the suit is of the year 1978 and further, directions have been issued to dispose of the same within six months from today, it is unlikely that the suit would be disposed of within a period of six weeks, which is the period, the learned counsel for the petitioners seeks to approach the Hon'ble Apex Court.

(M. S. SONAK, J.)