

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

WRIT PETITION NO.6973 OF 2014

Ashok Tukaram Jadhav : Petitioner
versus
Sou. Baby @ Renuka Nageshwarrao Ghadge & ors. : Respondents.

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

CORAM : R. M. SAVANT, J.
DATE : 05th January 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 27/8/2012 passed by the learned 4th Joint Civil Judge, Junior Division, Pune by which order the Application Exhibit 59 filed by the Respondent No.7 one City Corporation Ltd for substituting the Plaintiff by the Respondent No.7 came to be allowed to the extent of the Respondent No.7 being transposed as the Plaintiff No.2.

2 The suit in question being Regular Civil Suit No.757 of 2004 has been filed by the Respondent No.1 herein for partition, declaration and injunction in respect of the suit properties. The suit has been filed in the year 2004. It is during the pendency of the suit, that the Plaintiff transferred her one half undivided share in the suit property in favour of the Applicant i.e. the Respondent No.7 by a registered sale deed No.9400 of 2004. It seems that the

suit was listed before the Trial Court in the year 2013, however, the Plaintiff did not appear in the suit , hence notice of appearance came to be issued to the Plaintiff. The report in respect of the said notice was also returned. It is thereafter on 18/3/2013 that the Applicant i.e. the Respondent No.7 herein appeared in the said suit through an advocate and moved the present application. The application for substitution of the Plaintiff by the Applicant is founded on the fact that the Plaintiff has sold her one half undivided share to the Applicant i.e. Respondent No.7 by the registered sale deed and therefore the Plaintiff is required to be substituted by the Applicant.

3 The said application was opposed to on behalf of the Defendant No.6. However, the Defendant Nos.1 to 5 did not contest the said application. The Defendant No.6 opposed the said application on the ground of delay as also on the ground that the application did not refer to the provision under which it was filed.

4 The Trial Court considered the said objection of the Defendant No.6 and in so far as objection regarding the provision under which the Application was filed, the Trial Court held that the said application was referable to Order XXII Rule 10 of the Code of Civil Procedure. In so far as the ground of limitation is concerned, the Trial Court held that the said ground could be left open for being agitated in the suit. Having regard to the fact

that the Plaintiff has divested her one half undivided share in favour of the Applicant i.e. the Respondent No.7 and since the Plaintiff has prima facie shown her reluctance to prosecute the suit, the Trial Court deemed it appropriate to allow the said application and instead of substituting the original Plaintiff directed that the Applicant i.e the Respondent No.7 be joined as Plaintiff No.2 as the issue was as regards the original Plaintiff's entitlement to one half share in the suit property.

5 Having regard to the reasons mentioned in the impugned order and having regard to the well settled principles which are applicable to an application made under Order XXII Rule 10 of the Code of Civil Procedure, the order passed by the Trial Court directing the Applicant i.e. the Respondent No.7 herein to be transposed as Plaintiff No.2 cannot be taken exception to. No case for interference is therefore made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]