

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION NOS.1328/2013 1329/2013, 1330/2013, 1331/2013, 1332/2013,
1333/2013, 919/2014 & 920/2014

IN

WRIT PETITION NO.6134/2012

Chandrashekhar Ramrao Ubarhande (Patil) and others

..V/s..

Ramrao Yeshwant Patil (dead) through L.Rs. and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Abhay Sambre, Adv. for the petitioners.

Shri R.G. Kavimandan, Adv. for respondents 3, 4, 6(i) and 6(ii).

CORAM : Z.A. HAQ, J.

DATE : 7.4.2015

Civil Application (C.A.W.) No.1330/2013 is filed for bringing the legal representatives of respondent no.17 who is reported to be dead on 16th April, 1998, on record.

Civil Application (C.A.W.) No.1333/2013 is filed for bringing the legal representatives of respondent no.6 who is reported to be dead on 28th May, 1990, on record.

Civil Application (C.A.W.) No.920/2014 is filed for bringing the legal representatives of respondent no.14 who is reported to be dead on 8th May, 2010, on record.

The notices of the above mentioned applications were issued to the proposed legal representatives, however, none appears for

them. Considering the facts of the case i.e. the respondent nos.17, 6 and 14 are reported to be dead much prior to the filing of the writ petition and the fact that their legal representatives have not yet been brought on the record in the civil suit it will not be proper to entertain these applications. The civil applications are dismissed.

I have not adjudicated the issue as to whether the petitioners (plaintiffs before the Court) are entitled to bring the legal representatives of respondents 17, 6 and 14 on the record of the civil suit. The issue is left to be considered by the trial Court, if need arises.

WRIT PETITION NO.6134/2012

Heard Shri Abhay Sambre, the learned advocate for the petitioners/plaintiffs and Shri R.G. Kavimandan, the learned advocate for the respondents 3, 4, 6(i) and 6(ii). The petitioners have filed this writ petition challenging the order passed by the trial Court rejecting the application filed by the plaintiffs seeking permission to amend the plaint.

The civil suit is filed in 1987 which is now renumbered as Regular Civil Suit No.121/2009. The petitioners have filed the civil suit praying for decree for partition and separate possession and for other reliefs. During the pendency of the civil suit the original defendant no.1 – Shri Ramrao Yashwantrao Patil died on 31st May, 2004 and his legal representatives are brought on the record on 30th March, 2005. The legal representatives of the original respondent no.1 are claiming

their right in respect of share of the respondent no.1 on the basis of a Will said to have been executed on 12th March, 2004. In view of the facts as brought on the record by the legal representatives of the original defendant no.1, the plaintiffs filed the application (Exh. No.524) seeking permission to amend the plaint to incorporate the challenge to the legality and validity of the Will. The learned trial Judge by the impugned order has rejected the application. The petitioners being aggrieved by the order passed by the learned trial Judge have filed this writ petition.

The tenor of the impugned order shows that the learned trial Judge carried impression that the proposed amendment as sought by the plaintiffs cannot be permitted as the plaintiffs have not explained as to what due diligence is exercised by them and what prevented them from seeking amendment from 30th March, 2005 till 2012. It appears that the learned trial Judge felt that the bar created by the proviso below Rule 17 of Order VI of the Code of Civil Procedure is attracted and consequently, the amendment as sought by the plaintiffs cannot be permitted.

The plaintiffs have filed the suit praying for decree for partition and separate possession along with other reliefs. It is undisputed that the legal representatives of original defendant no.1 are in possession of the suit property. The respondents have not been able to point out as to what advantage the plaintiffs have gained by delaying the matter and not filing the application seeking amendment to the plaint, at the earlier stage.

The civil suit having been filed in 1987 i.e. much prior to 1st July, 2002 when the proviso below Rule 17 of Order VI has been added, the bar created by it will not be applicable.

In view of the above, in my view, the plaintiffs can be permitted to incorporate the proposed amendment inasmuch as the pleadings sought to be brought on the record by the proposed amendment are necessary for proper and complete adjudication of the issues involved in the matter. The impugned order is set aside. The application (Exh. No.524) filed by the petitioners/plaintiffs is allowed.

The writ petition is allowed in the above terms. The petitioners shall pay costs of Rs.1,000/- (Rs. One Thousand Only) to the respondents 3, 4, 6(i) and 6(ii) within one month and produce the receipt of it on the record of the civil suit, failing which the learned trial Judge shall pass appropriate orders considering it to be non-compliance of the order passed by this Court.

JUDGE