

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6226 OF 2013

PRAMOD JAICHAND SAND AND OTHERS	...	Petitioner
Vs.		
RAJANI RANJAN KHANOLKAR	...	Respondent

Mr. C.V. Korhalkar, Advocate for the petitioner.		
Mr. N.L. Jadhav, Advocate for the respondent.		

with

WRIT PETITION NO. 5604 OF 2015

RAJANI RANJAN KHANOLKAR	...	Petitioner
Vs.		
PRAMOD JAICHAND SAND AND OTHERS	...	Respondent

Mr. N.L. Jadhav, Advocate for the petitioner.		
Mr. C.V. Korhalkar, Advocate for the respondent.		

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CORAM : T.V. NALAWADE, J.
DATE : 16-09-2016.

ORDER :

1. During arguments, the learned counsel for petitioner in petition no. 5604 of 2015 submitted that on instructions he wants to withdraw the petition. The same is disposed of as withdrawn. Hearing was given in the other proceeding to both the sides.

2. The petition is filed to challenge the order made on exhibit-106 of R.C.S. No. 29 of 2004 filed by respondent Smt. Rajani Khanolkar. The said application was filed by present petitioner original defendant no.3, under the Order 22 Rule 4 of

Civil Procedure Code for disposal of the suit due to abatement. This application is rejected by the trial court. It appears that, Miscellaneous Civil Appeal was filed against the order but the said matter is also disposed of by holding that the appeal was not tenable.

3. The suit is filed by Smt. Rajani for setting aside sale deed executed in favour of Defendant no.1 Krishna by plaintiff and her husband Shri. Ranjan. The husband of Smt. Rajani is also party to the proceeding as a formal party defendant. During pendency of the suit defendant no.1 Smt Krishna alienated the property to present petitioner, defendant no.3 and so present petitioner was brought on record as defendant.

4. The aforesaid application came to be filed after the death of Smt. Krishna. Smt. Krishna died on 29/07/2006 and the application came to be filed on 21/12/2012 by defendant no.3. In the application exhibit-106 the petitioner, defendant no.3, made main contention that the case of plaintiff was against defendant no.1 that defendant no.1 had deceived the plaintiff and so the entire suit needs to be treated as abated. The trial court has held that the purchaser from defendant is brought on record and so in view of provision of Order 22 Rule 10 of Civil Procedure Code, the suit can be prosecuted and the right to sue survived. Reliance was placed by petitioner's counsel on the case of **T. Gnanavel Vs. T.S. Kanagaraj and Anr.** reported in **2009 DGLS (Supreme Court) 313.**

5. The learned counsel for the petitioner took this court through provisions of Order 22, Rule 4 and other provisions and submitted that entire suit needs to be treated as abated. This submission is not at all acceptable. There is no reference to the

“purchaser” from the deceased party in these provisions. Present petitioner was already brought on the record, though, during lifetime of defendant no.1 and so he was there to defend the matter. The purchaser stands in the shoes of defendant no.1 and all the rights of defendant no.1 and also the liability to prove few things come to defendant no.3, the purchaser. The provisions of Order 22, Rule 10 shows that after the assignment, transfer of the rights by one of the party, the party in whose favour such transfer has taken place can defend the matter and the suit does not abate.

6. In view of these circumstances, this court holds that there is no force in the aforesaid submissions made by defendant no.3 and there are no merits in the present proceedings. So, writ petition no. 6226 of 2013 stands dismissed.

(T.V. NALAWADE)
JUDGE

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