

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2208 OF 2010

Balkrishna Gopal Deole, since deceased through Lrs Jitendra B. Deole & Anr.	..	Petitioners
VS.		
Vasant Sadashiv Deole & Ors.	..	Respondents

Mr. S. S. Kanetkar for Petitioners.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 20 JULY 2016

P.C :

1] On 19 July 2012 the parties were put to notice that this writ petition may be heard and disposed of finally at the stage of admission.

2] Accordingly, Rule. Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 9 September 2009, by which the learned Civil Judge, Senior Division, Pune, has rejected the petitioners application for correction in the name of the plaintiff no. 1 from 'Gopal Balkrishna Deole' to '*Balkrishna Gopal Deole*'.

4] Mr. Kanetkar, learned counsel for the petitioners has submitted that the trial in the suit was yet to begin when leave to amend the cause title as aforesaid was applied for. Mr. Kanetkar

further submitted that the said plaintiff no. 1 has already expired and it is at the stage of bringing on record the legal representatives, the mistake was realised and therefore, amendment was applied for. Mr. Kanetkar has contended that the impugned order is not only laconic but is also illegible. According to him, it is impossible to decipher the reasoning, if any, in the impugned order, which, in all, comprises of hardly 2 to 3 sentences.

5] There is substance in the criticism levelled by Mr. Kanetkar. There does not appear to be any reasoning in the impugned order and even if be some reasoning therein, the same is not at all legible.

6] Be that as it may, since the amendment was only for the purposes of correcting the name of the deceased plaintiff no. 1, there was no reason to reject such amendment particularly when such amendment was applied for before the commencement of the trial. That apart, the petitioners have placed on record the death certificate of not only the plaintiff no. 1 but also of father, in order to indicate the correct name of the plaintiff no. 1. No prejudice as such will occasion to any of the respondents if the amendment were to be permitted. Ultimately, the plaintiff no. 1 has expired and it is his legal representatives who are to pursue the suit.

7] The records indicate that this petition has been dismissed as against respondent nos. 10, 13 and 14, since they were not diligently served. The fact however remains that rest of the respondents have been duly served. Besides, considering the nature of the order which is proposed to be made, there is no question of any prejudice to the said respondents. This matter has come up on the board 42 times and no useful purpose will be served by once again adjourning this matter.

8] For all the aforesaid reasons, the impugned order dated 9 September 2009 is set aside. Leave is granted to the petitioners to correct the name of the deceased plaintiff no.1 in the cause title from 'Gopal Balkrishna Deole to '*Balkrishna Gopal Deole*'. Such amendment to be carried out within four weeks from today.

9] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

10] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)