

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5275 OF 2016

1. Mamtabai Maruti Mane
Deceased

2. Gyanoba Maruti Mane,
Age 60 years, Occ. Agri.,
R/o Wakdi Tq. Ambajogai,
District Beed.

3. Mahadev Maruti Mane,
Age 45 years, Occ. Agri.,
R/o Wakdi Tq. Ambajogai,
District Beed.

..Petitioners

Versus

Bhaguji Paraji Munde,
Deceased, Through L.Rs.

1. Parwatibai Bhagoji Munde
Age 52 years, Occ. H.H.
R/o Ladzari, Tq. Parali -
Vaijanath, Dist. Beed.

2. Babita Suresh Phad,
Age 28 years, Occ. H.H.
R/o Ladzari, Tq. Parali -
Vaijanath, Dist. Beed.

3. Mahadev Bhagoji Munde,
Age 25 years, Occ. Agri.,
R/o Ladzari, Tq. Parali -
Vaijanath, Dist. Beed.

4. Sindu Balaji Kendre
Age 22 years, Occ. H.H.
R/o Ladzari, Tq. Parali -
Vaijanath, Dist. Beed.

5. Rinku Santosh Phunde,
Age 20 years, Occ. H.H.
R/o Ladzari, Tq. Parali -
Vaijanath, Dist. Beed.

..Respondents

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Advocate for Petitioners : Shri Anand D. Wange
Advocate for Respondent 3 : Shri Munde Sambhaji G.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 19, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioners / plaintiffs had moved an application Exhibit 12 in Regular Civil Appeal No.27 of 2008 praying for bringing the legal heirs of the deceased defendant Bhaguji on record, who died on 2.1.2015. RCS No. 302 of 2006 was dismissed.
5. The petitioners moved Exhibit 12 on 25.1.2015, praying for leave to bring L.Rs. of deceased respondent on record. By the impugned order, the appeal Court has rejected application Exhibit 12. It is stated that RCA No.21 of 2008 has still not been disposed off as abated.

6. Learned counsel for the respondent / defendant relies upon the draft affidavit in reply and submits that if sufficient reasons are not set out, the application for bringing legal heirs deserves to be rejected. He relies upon the judgment of the Honourable Apex Court in the matter of Balwant Singh Vs. Jagdish Singh [(2010) 8 SCC 685], to support his contention that if sufficient cause is not indicated, the L.Rs. cannot be brought on record and the delay caused ought not to be condoned.

7. Having heard the submissions of the learned Advocates for the respective sides, I find that the defendant did not file any purshis in the appeal proceedings under Order XXII Rule 10A of the CPC to indicate that Bhaguji had passed away on 2.1.2015. A purshis dated 19.1.2015 indicating the death of Bhaguji was filed in RCS No.351 of 2013. The respondent, therefore, contends that based on the said purshis filed in another proceeding, to which the L.Rs. of the deceased petitioner are party, they have derived the knowledge of the death of Bhaguji.

8. It appears from the record that Exhibit 12 was filed by the petitioners after a span of 1 year and 24 days, pursuant to the demise of Bhaguji, which is delayed by about 389 days. It is specifically contended by the petitioners that firstly no purshis was filed by the

Pleader of the deceased / defendant before the appeal court and secondly, the delay in filing the application Exhibit 12 was neither deliberate nor inordinate. The Honourable Apex Court in the Balwant Singh's case (supra) was dealing with the delay of 778 days, in the backdrop of the litigating parties having come to the knowledge of the demise of a litigant. The Honourable Apex Court in this backdrop concluded that the reasons were not sufficient and the delay of 778 days could not be condoned.

9. In the instant case, the period of limitation being 30 days, renders the application Exhibit 12 delayed by 361 days. The suit property at issue is an immovable property. Reasons cited are that the petitioners are residents of different villages and did not get the complete knowledge of the names and addresses of the L.Rs. of Bhaguji and hence, beyond the limitation of 30 days, the delay of 361 days has occurred. I, therefore, do not find that the said delay could be termed being deliberate or inordinate. Moreover, the issue is about an immovable property and the petitioners / appellants, whose suit has been dismissed, would be rendered remediless and will forever lose the suit property and their rights if any, in the said property.

10. Learned counsel for the respondents submits that heavy costs may be imposed on the petitioners if this petition is to be allowed.

11. Considering the above, this petition is partly allowed. The impugned order dated 21.3.2016 is quashed and set aside. Application Exhibit 12 is allowed and the petitioners shall bring on record the L.Rs. of deceased Bhaguji, within a period of four weeks from today. In order to reduce the hardships of the respondents, the petitioners shall deposit a total amount of Rs.5,000/- as costs before the appeal Court within four weeks from today and the defendants would be at liberty to withdraw the said amount in equal proportions without conditions.

12. Rule is made partly absolute, accordingly.

13. By the consent of the parties RCA No. 21 of 2008 shall be decided by the appeal Court as expeditiously as possible and preferably on/or before 15.12.2017.

(RAVINDRA V. GHUGE, J.)

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