

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3789 OF 2014
WITH
WRIT PETITION NO.7746 OF 2014
WITH
CIVIL APPLICATION NO. 14341 OF 2017
AND
CIVIL APPLICATION NO. 11481/2015

RAHUL GOROBA DHAMALE
VERSUS
NARSING PRABHU DHAMALE DIED LRS

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Advocate for Petitioner : Shri V.D.Gunale
Advocate for Respondents 1A to 1D & 3 : Shri Sachin S.Deshmukh
Advocate for Respondent 3 : Shri A.S.Deshmukh
Advocate for Respondents 2A to 2C in CA No.11481/2015 :
Shri A.S.Vasmatkar

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 07, 2017

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PER COURT :-

1. Civil Application No. 14341 of 2017 is allowed. Delay of 67 days is condoned and the applicants shall forthwith bring the L.Rs. of deceased Narsing on record in Writ Petition No.7746 of 2014. Learned counsel appearing for deceased Narsing waives notice for his L.Rs. in both the petitions.

2. Civil Application No.11481 of 2016 is filed by the petitioner in Writ Petition No.7746 of 2014 seeking leave to bring on record

the L.Rs. of defendant No.1 / Vaishali, who has passed away. This application is allowed. L.Rs. of defendant No.1 shall be brought on record forthwith. Shri Wasamatkar, learned Advocate has appeared on behalf of the L.Rs.

3. By the first petition, the petitioner / Rahul Goroba Dhamale (hereinafter referred to as 'Rahul'), seeks to challenge the order dated 10.2.2014, passed by the trial Court and further prays that he be permitted to prosecute RCS No.65 of 2012 in place of the deceased Kalubai who was the original plaintiff.

4. The second petition is filed by Bhagwan Eknathrao Dhamale (hereinafter referred to as 'Bhagwan'), who seeks to challenge the order dated 6.8.2008 and 10.2.2014 passed by the trial Court in RCS No.65 of 2012. Bhagwan desires to be added as defendant No.3 in the said suit instituted by the deceased original plaintiff Kalubai since Bhagwan claims to have purchased the suit property from defendants 1 and 2.

5. I have considered the submissions of the learned Advocates for the respective sides.

6. There is no dispute that Rahul is before the Court on the basis

of his claim that he was the adopted son of Kalubai. Narsing Prabhu Dhamale ((hereinafter referred to as 'Narsing'), who is respondent No.1 in the first petition filed by Rahul, also claims to be the adopted son of Kalubai on the basis of her will deed. Rahul claims to be the adopted son on the basis of the adoption deed. Bhagwan claims that the suit cannot proceed in his absence and he is a necessary defendant.

7. Considering the consensus between the litigating sides that all contentions be kept open for the trial Court to decide, I am not adverting to all of their contentions in the light of the order that I would be passing.

8. There is no dispute that Bhagwan was initially arrayed as defendant No.3. Narsing was permitted to step into the shoes of deceased Kalubai. The application filed by Rahul in RCS No.65 of 2012, was rejected. Since Kalubai passed away, RCS No.65 of 2012 (Old SCS No. 63 of 2005), was abated. After Narsing approached the trial Court with a restoration application, claiming to be the legal heir, RCS No.65 of 2012 was restored. This restoration, by setting aside the abatement order, should have led to the restoration of the suit, at the stage at which it was abated. There is no dispute that Bhagwan was defendant No.3 at the stage when the suit was abated.

9. Consequentially and in the light of the consensus between the parties, the first petition filed by Rahul is partly allowed by setting aside the impugned order dated 10.2.2014, by which, the application of Rahul was rejected. Rahul, therefore, will be the second plaintiff in place of Kalubai in RCS No.65 of 2012. So also, the prayer of Bhagwan to be added as defendant No.3 also stands allowed and consequentially, the second petition is also partly allowed. Application of Narsing, since is already allowed and RCS No.65 of 2012 has been restored indicating him as plaintiff, Rahul would, therefore, be arrayed as plaintiff No.2 in the said suit. This suit has already been clubbed with RCS No.616 of 2012, wherein, Rahul seeks to establish his adoption deed. In order to ensure that the ends of justice are met and no party is prejudiced by the prima facie conclusions in this proceeding, the status of Rahul will be subject to the result of RCS No.616 of 2012 and the status of Narsing would depend on his claim being adjudicated upon in RCS No.65 of 2012.

10. Since both the above said suits have been clubbed and considering that the earlier suit is more than 12 years of age, I deem it proper to expedite the hearing of RCS No.65 of 2012 with RCS No.616 of 2012 and the trial Court shall decide the said suits as

expeditiously as possible and preferably on/or before 31.8.2018.

The litigating sides shall fully cooperate the trial Court and shall refrain from seeking unnecessary adjournments. All contentions of the litigating sides are kept open.

11. All pending Civil Applications in both the petitions stand disposed off.

(RAVINDRA V. GHUGE, J.)

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