

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9864 OF 2014
WITH
WRIT PETITION NO. 9864 OF 2016

PRASHANTKUMAR PUKHRAJ JAIN
VERSUS
SUGAMCHAND DIPCHAND JAIN AND ANOTHER

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Advocate for Petitioners : S/Shri G.V.Wani & K.C.Sant
AGP for Respondent 1 : Shri N.T.Bhagat
Advocate for Respondents 2 & 3 : Shri B.M.Dhanure
Advocate for Respondent 4 : Shri P.V.Barde
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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 12, 2017
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PER COURT :-

1. In the first petition, the petitioner is aggrieved by the order passed by the trial Court, dated 12.9.2014, by which, application Exhibit 87 filed by the respondent No.4 in RCS No.65 of 2012 has been allowed. By the impugned order, respondent No.4 is substituted as L.R. of deceased defendant No.1 in the said suit.

2. In the second petition, the petitioner is aggrieved by the order dated 30.8.2016 passed by the trial Court, by which, application Exhibit 61, filed by the petitioner / defendant No.2 herein, seeking a stay to RCS No.366 of 2014 has been rejected.

3. This Court (Coram : T.V.Nalawade, J.) has heard the petitioner

in the second petition for quite some time and has concluded that considering the nature of the suit, filed by respondent No.1 Rahul herein, even if a decree of injunction is made in favour of Rahul, that would not come in way of the petitioner Prashant from claiming a decree of possession in his favour. Considering the said order dated 4.10.2016, the second petition stands disposed off.

4. In so far as the first petition is concerned, the petitioner submits that the application filed by Rahul claiming to be the adopted son of the deceased Suganchand has been allowed under Order I Rule 10 of the Civil Procedure Code ("CPC"). Grievance of the petitioner is that Order XXII Rule 5 of the CPC mandates that the trial Court ought to decide whether Rahul is a necessary party or not. Without deciding the said aspect, merely because an application has been filed on the basis of an adoption deed, the trial Court could not have allowed Exhibit 87. It is further pointed out that application Exhibit 84 was earlier allowed by the trial Court in RCS No.65 of 2012 (Old No. 238 of 2007), for the reason that the legal heir of the deceased Suganchand known to the petitioner was added in the said suit. Accordingly, Pukharaj was brought on record in the said suit.

5. Shri Wani has relied upon the judgment of the Honourable Supreme Court in the matter of Smt. Ajambi (deceased) Vs. Roshanbi and others [2010 AIR SCW 6517] and the judgment of this Court in the

matter of Roni Adi Tarapurwala and another Vs. Dinshaw Adarji Tarapurwala [2012(5) Bom.C.R.37].

6. Shri Barde, learned Advocate for the respondent No.4 along with Advocate Shri Dhanure, appearing for respondents 2 and 3 submits that the scope of Order XXII Rule 5 of the CPC requiring the trial Court to determine the question of legal representative is distinct and different from the scope of Order I Rule 10(2) of the CPC, vide which the trial Court has to decide at any stage in the proceedings, as to whether any party has been properly joined and whether the presence of the party would be necessary in order to enable the Court to effectually and completely adjudicate upon the suit and settle all questions involved in such a suit. He, therefore, submits that in the event the petitioner moves an application under Order XXII Rule 5 of the CPC, he would have no objection for the trial Court in determining the question as to who is the legal representative of the deceased Suganchand.

7. In rebuttal Shri Wani submits that the claim of respondent No.4 is primarily based on an adoption deed and hence, while deciding who is the L.R. under Order XXII Rule 5 of the CPC, the trial court will have to consider the legality and validity of the adoption deed. Consequentially, the entire stand of respondent No.4 / Rahul seeking his impleadment only on the basis of the adoption deed will

have to be scrutinized under Order XXII Rule 5 of the CPC.

8. In the light of the above, it is evident that the application of Rahul, Exhibit 87, that has been allowed by the trial Court vide the impugned order dated 12.9.2014 and the addition of Rahul, is not within the purview of Order XXII Rule 5 of the CPC. Considering the law laid down and the scope of Order XXII Rule 5 of the CPC, the impugned order would not create any impediment in the path of the petitioner since the petitioner is yet to move such an application pursuant to the addition of Rahul, which is purely on the basis of Order I Rule 10(2) of the CPC.

9. Considering the above, this petition is disposed off. Needless to state, if the petitioner desires to make an application under Order XXII Rule 5 of the CPC, the trial Court shall consider the same on its own merits, keeping in view the law as has been laid down by the Honourable Supreme Court in the case of Ajambi (supra).

10. It is informed by the learned counsel for the respective sides in both the suits at issue, that an application has been filed on 27.9.2016 by both the sides jointly praying for clubbing of RCS No.65 of 2012 with RCS No.366 of 2014. The said application is still pending. It is prayed that a decision on the said application may be expedited.

11. Keeping in view that the first suit is of the year 2007, the learned Civil Judge (S.D.) shall refer the said application dated 27.9.2016 to the competent authority for a decision within two weeks from today and the competent authority, which is said to be the learned Principal District Judge of Jalgaon, shall consider the said application on it's own merits, within a period of four weeks thereof.

(RAVINDRA V. GHUGE, J.)

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