

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9532 OF 2012
WITH
CIVIL APPLICATION NO.3950 OF 2014

PRAFULLA DAYARAM PIPADA
VERSUS
SHARAD MADHAVRAO PALANDE AND ORS

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Advocate for Petitioner : Shri Gandhi Amol S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 14, 2017

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PER COURT :-

1. The petitioner is aggrieved by the order dated 17.8.2012, by which, application Exhibit 188 filed in Special Civil Suit No.70 of 2008 has been rejected and the petitioner / plaintiff is restrained from adding the L.Rs. of the deceased defendant No.8 in the suit.

2. The respondents have been served by paper publication under the orders of this Court. No appearance has been entered, either through an Advocate or in person, to the extent of those defendants who are served by paper publication and those who are served by Court notice.

3. Learned counsel for the petitioner submits that the suit

property is an agricultural land. Notices were issued by the trial Court and after the defendants, who were served, had filed their written statements, it was revealed that the defendant No.8, namely, Indubai Bhaskarrao Tribhuvan had passed away, prior to the institution of the suit. After the petitioner received the said information, an application Exhibit 188 was filed. Grievance is that though the petitioner has invoked Order I Rule 10 of the Code of Civil Procedure ("CPC"), Exhibit 188 was rejected by the trial Court for the reason that the plaintiff could resort to Order XXII Rules 4 and 9 of the CPC.

4. Rule 4 pertains to the death of one or more defendants and the right to sue surviving, would entitle the plaintiff to file an application for adding him as a defendant. Learned counsel strenuously submits that Clause (1) under Rule 4 of Order XXII of the CPC would come into the picture only if the defendant has died during the pendency of the suit. He strenuously contends that under Order I Rule 10(2) of the CPC, the Court can strike off the name of the improperly joined parties and where such defendant is struck off, the name of the person who ought to be joined can be ordered by the trial Court to be added.

5. It also cannot be ignored that the petitioner has invoked Section 151 of the CPC, which would empower the trial Court to pass such orders as it may find necessary in the matter to ensure that the ends of justice are met.

6. Considering the above, this petition is allowed. The impugned order dated 17.8.2012 is quashed and set aside and application Exhibit 188 is allowed. The petitioner shall add the L.Rs. of the deceased defendant No.8 in the suit, within a period of four weeks from today. Needless to state, the trial Court shall issue notices to the newly added defendants in the suit before proceeding with the matter.

7. Pending Civil Applications, if any, stand disposed off.

(RAVINDRA V. GHUGE, J.)

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