

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2385 OF 2015

Shri Dasharathbhai Mohanbhai Shah and ors. .. Petitioners

Vs.

Shri Namdev Mahadu Polekar and ors. .. Respondents

Ms.Jaishree Surati i/b S.Ashwinikumar & Co., for the
Petitioners.

CORAM : M.S.KARNIK, J.

15th MARCH, 2017

P.C. :

. Heard learned Counsel for the petitioners.

2. On 21/12/2015, this Court had issued notice to respondents and indicated that an endeavour shall be made to dispose of the matter finally at the stage of admission itself. The order dated 01/04/2016 passed by this Court indicates that the respondents are in fact served. Learned Counsel for the petitioners states that consequent to the order dated 01/04/2016, they have informed the respondents further date of hearing. The affidavit of service to that effect is filed on

27/04/2016. None appears for the respondents though they are duly served.

3. The petitioners have preferred the Revision Application before the Maharashtra Revenue Tribunal, Mumbai and the same is pending. During the pendency of the Revision, an application is filed below Exhibit A- 8 by the petitioners for amending the Revision Application for impleading the name of Smt.Pushpa Pilaji Polekar as respondent No.12. According to the petitioners, Revision Application is filed by the petitioners against the order dated 06/12/2012 passed in Appeal No. 14 of 2012 by the Sub – Divisional Officer, Panvel, Panvel Division. The said Appeal was filed by the petitioners against the respondents who are the heirs of the one Mr.Mahadu Devu Polekar. Apart from the respondents one Mrs.Pushpa Pilaji Polekar – daughter of Mahadu is also the heir. However, Pushpa was not joined in the said Appeal before the S.D.O. and respondents never took any objection and in fact consented to the exclusion of Pushpa.

4. It is the further case of the petitioners that with a view to delaying the hearing of the Revision, one of the respondents objected to Pushpa not being the party to the proceedings, therefore, with a view to leave no lacuna, the petitioners applied for adding Pushpa as party respondent No.12.

5. The said application was objected by the respondents by filing their say. According to the respondents the petitioners had knowledge that Pushpa is legal heir of Mahadu and hence, the application is nothing but an after thought. The petitioners never made Pushpa a party to the proceedings before the Sub-Divisional Officer in Appeal. According to the respondents, application deserves to be dismissed.

6. The learned Member of the Maharashtra Revenue Tribunal by the impugned order rejected the application.

7. Perused the impugned order. According to the

Tribunal, the petitioners ought to have made Pushpa as a party to the proceedings before the Revenue Authority and now after such a long delay, the petitioners can not be allowed to make Pushpa as a party in the Revision. According to the Tribunal, the application filed by the petitioners is nothing but an after thought and made at a belated stage.

8. In my opinion, in the interest of justice, application Exhibit A-8 deserves to be allowed. According to the petitioners, the respondents never objected during the course of hearing of the Appeal before the Sub-Divisional Officer to the exclusion of Pushpa from the array of the respondents. Before the Tahsildar Pushpa was very much a party but due to some typographical error, she remained to be added as a party respondent in Appeal before S.D.O. In fact, this exclusion was never objected by the respondents. It is not the case of the respondents that the petitioners have derived any unfair advantage by not impleading Pushpa in the Appeal or the Revision. In these circumstances, if the petitioners have made an application for adding Pushpa as a

party respondent No.12, the same deserves to be allowed in the interest of justice. In this view of the matter, the following order.

- I) The impugned order dated 28/10/2014 passed by the Maharashtra Revenue Tribunal below Exhibit- A-8 is set aside.
- II) The application Exhibit A-8 in Revision Application No. 125 of 2013 is allowed and the Tribunal may permit the petitioners to carry out consequential amendment to the cause title.
- III) No order as to costs.

9. Writ Petition is disposed of in the above terms.

(M.S.KARNIK, J.)