

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5910 OF 2012

Ajit G. Thakkar .. Petitioner.
v/s.
Smt. Bilanch Tellis
(since deceased) through L.R.
1-A Mrs. Vincentia S. Tellis & Others .. Respondents.

Mr. Rajesh Kachare, for the Petitioner.
Mr. M. S. D'Mello, for Respondent No.2.
Mr. Suresh Rajeshwar, for Respondent No.3.

CORAM: M.S.SANKLECHA, J.
DATE : 29th AUGUST, 2017.

P.C:-

This Petition under Article 227 of the Constitution of India, challenges the order dated 11th May, 2012 passed by the City Civil Court, Bombay.

2 By the impugned order, the Petitioner's application for amendment to the plaint was rejected. The Petitioner sought to bring on record the following by the proposed amendment of the plaint :

- (a) legal heirs of the deceased Defendant No.1;
- (b) add Respondent Nos. 2 to 4 in the Chamber Summons as party-defendant Nos.4 to 6 in the suit; and
- (c) to carry out the necessary amendments in the chamber summons.

3 Notice for admission was issued to the Respondents and in

the meantime, there was an ad-interim stay to the trial of the suit. The impugned order dated 11th May, 2012, after recording the purpose of chamber summons taken out by the Petitioner, does not deal with prayers (b) and (c) above and proceeds to reject the chamber summons in its entirety, holding that the legal heirs of Defendant No.1 cannot be brought on record. This, not dealing with the chamber summons in its entirety, makes the impugned order un-sustainable, calling for remand and restoration to the Trial Court for passing an order in respect of prayers (b) and (c) recorded herein above. The aforesaid course of action is not disputed by the Respondents.

4 However, Mr. D'Mello, learned Counsel appearing for Respondent No.2 and Mr. Rajeshwar, learned Counsel appearing for Respondent No.3 urged that so far as the impugned order dated 11th May, 2012 to the extent it has rejected Petitioner's application to bring on record the legal heir of Defendant No.1, calls for no interference under Article 227 of the Constitution of India.

5 The impugned order dated 11th May, 2012 while rejecting the prayer to add legal heir of deceased Defendant No.1 takes into account the fact that the Petitioner had earlier taken out a Chamber Summons being Chamber Summons No.557 of 2010 – wherein among other reliefs, Petitioner had sought to add the legal heir of deceased Defendant No.1 as party-defendant to the suit. However, the prayer with regard to the above namely – adding the legal heir of deceased Defendant No.1, was not granted by order dated 11th January, 2012 passed on the Chamber Summons No.557 of 2010. It is further emphasized by the Advocate for Respondent that the order dated 11th January, 2012 does not record any

liberty being granted to the Petitioner to pray for identical reliefs viz; adding the legal heir of deceased Defendant No.1 to the proceedings. Thus, it is submitted that impugned order dated 11th May, 2012 should be undisturbed even while directing the Trial Court to deal with the other two issues raised in the Chamber Summons.

6 Mr. Kachare, learned Counsel appearing for the Petitioner assails the finding in the impugned order dated 11th May, 2012 even to the extent it disallowed the application to add the legal heirs of Defendant No.1. Mr. Kachare, points out that in an appeal, arising out of the order of the City Civil Court, in this very suit, before this Court being AO No.632 of 1999, the legal heirs of deceased Defendant No.1 were added as party thereto and order on that appeal restored the suit, which had been dismissed for default. It is submitted that once a party has been added in the appeal proceedings, such as in this case, for all subsequent proceedings, the party added in a appellate proceedings would continue to be party in the suit. This on the premise that an appeal is a continuance of the suit. However, subject to the Petitioners' moving an application before the Trial Court for the necessary addition of parties. In support of the aforesaid submission, he places reliance upon the decision of the Apex Court in *Rangubai Kom Sankar Jagtap v/s. Sunderbai Bhratar Sakharam Jedhe and Others* AIR 1965 SCC 1794 and *Mithailal Dalsangar Singh and Others v/s. Annabai Devram Kini and Others* (2003) 10 SCC 691. In particular, reliance was placed upon paragraph No.9 of Rangubai (supra) – wherein illustration 3 therein is of similar nature to the facts arising herein. In fact, the Court observed that the appeal being a continuation of a suit, bringing the legal representative on record would enure during the subsequent stages of the suit. In Mithalal

(supra), the Court held that once a party has been added in an appeal, then such addition in appeal would have the effect of bringing on record the party even in suit. All that would be required to be done, is the ministerial act of bringing the legal heirs on record.

7 In view of the fact that the impugned order is being set aside and restored to the Trial Court for passing fresh orders, on prayer Nos. (b) and (c) as stated herein above. It would be appropriate that the Trial Court considers the entire Chamber Summons in its entirety, including the relief with regard to prayer clause (a) herein above namely – adding the legal heir of deceased Defendant No.1 as party-Defendant. This after taking into account not only the two decisions cited but also keeping in view the fact that in the earlier Chamber Summons, being Chamber Summons No.557 of 2010, identical relief as prayed was not granted nor liberty was given to the Petitioner to file another Chamber Summons. It is made clear that I have not expressed any opinion on the merits or sustainability of the Chamber Summons with regard to clause (a).

8 The impugned order dated 11th May, 2012 is quashed and set aside and the entire Chamber Summons is restored to the Trial Court for fresh disposal in accordance with law. Needless to state the Trial Court would decide the matter on its own merits, after hearing the parties. All contentions are left open including the contention of delay in moving the Chamber Summons, according to Respondent No.3.

9 **Petition disposed of** in the above terms. No order as to costs.

(M.S.SANKLECHA,J.)