

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.14398 OF 2016

Ashokkumar Laxmansingh Galundia & anr. .Petitioners

Vs.

Amrish Rasiklal Shah & ors. .Respondents

Mr.Karl Tamboly a/w. Ms Sheetal Shah a/w. Ms Isha Vyas i/b. M/s.
Mehta & Girdharlal, Advocate, for the Petitioners

CORAM : R.G.KETKAR, J.

DATE : 09.03.2017

P.C.

. Heard Mr. Tamboly, learned counsel for the Petitioners.

2. By this Petition under Article 227 of the constitution of India, the Petitioners, hereinafter referred to as 'Original Defendants' have challenged the Judgment and Order dated 12.07.2016 passed by the learned Judge, City Civil Court, Greater Bombay in Chamber Summons No.1006 of 2010 in Short Cause Suit No.455 of 2009. By that order, the learned trial Judge allowed the Chamber Summons taken out by the Respondents No.2 & 3 herein for their impleadment in the suit.

3. In support of this Petition, Mr. Tamboly strenuously

contended that the Respondent No.2 is not legally wedded wife of Ramesh Jamnadas Thakkar (since deceased). He submitted that Ramesh Thakkar (since deceased) was married to one Mrs. Jyoti Ramesh Thakkar on 16.12.1971 as per the Hindu rights. Their marriage was dissolved by Order dated 29.08.2000 by the learned Judge, Family Court No.2, Mumbai in Petition No.F – 209 of 2000. He submitted that the Respondent No.2 claims to have married Ramesh Thakkar as per memorandum of marriage dated 18.01.1990. In short, he submitted that in view of Section 5 of the Hindu Marriage Act, 1955, the purported marriage between Ramesh and Respondent No.2 is void. He, therefore, submitted that the learned trial Judge was not justified in allowing the Chamber Summons.

4. I have considered rival submissions advanced by Mr. Tamboly. I have also perused the material on record. In paragraph 7 of the impugned Order, the learned Judge has observed thus :-

“7..... However in the present case, the Court has yet to decide whether the suit property is ancestral coparcenary property or not. Moreover there is no evidence or material on record to prove that the present applicant no.1 is not legally wedded wife of deceased plaintiff no.1. Hence objection raised by the defendants is not acceptable.....”

5. A perusal of the above extract portion shows that the learned trial Judge has not concluded this issue and its a matter of evidence to be adduced by the parties during the course of trial.

6. In view thereof I do not find that the learned Judge has committed any error in passing the impugned Order. Hence, the Petition fails and same is dismissed. It is needless to observe that the learned Judge will decide the question whether the Respondent No.2 is a legally wedded wife or not on the basis of evidence on record and in accordance with law uninfluenced by the observations made in this Order. All contentions of the parties in that regard are expressly kept open. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proceedings as contemplated by Section 105(1) of C.P.C. Order accordingly.

(R.G.KETKAR, J.)