

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 676 OF 2016

Mr Jaspal Singh Kohli ...Applicant

Versus

Arvinder Pal Singh Ahuja

And Ors

...Respondents

....

Mr.G.S. Godbole, Senior Advocate for the Applicant.

Mr.Mayur Khandeparkar i/b. M/s. Thakore Jariwalla & Asso.
for Respondent No.1.

Mr. E.K. Sashidharan, Advocate for Respondent No.2.

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CORAM : R. G. KETKAR, J.

DATE : 09th JANUARY, 2017

P.C.

1. Heard Mr.G.S. Godbole, learned Senior Counsel for the applicant, Mr.Mayur Khandeparkar, learned Counsel for respondent No.1 and Mr. E.K. Sashidharan, learned Counsel for respondent No.2, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'defendant No.2(a) has challenged the judgment and order dated 23.7.2013 passed by the learned trial Judge in Chamber Summons No.810/2012 as also the judgment and

order dated 8.9.2016 passed by the learned trial Judge in Notice of Motion No.3128/2015 in Suit No.5485/1990. By order dated 23.7.2013, the learned trial Judge allowed the Chamber Summons taken out by respondent No.1, hereinafter referred to as the 'plaintiff', for bringing him on record as the legal heir of original plaintiff. Defendant No.2(a) took out Notice of Motion No.3128/2015 for recalling order dated 23.7.2013 on the ground that Chamber Summons was allowed *exparte* and that the Chamber Summons was also barred by law of limitation. By order dated 8.9.2016, the learned trial Judge has dismissed the Motion. It is against these orders, defendant No.2(a) has instituted present Civil Revision Application.

3. Mr. Godbole submits that before the learned trial Judge, the decision of Apex Court in the case of *Katari Suryanarayana and others v. Koppiseti Subba Rao and others, 2009 (11) SCC 183* was cited. The learned trial Judge has, however, not referred to this judgment. In paragraph-3, the learned trial Judge has referred to the decision of *Union of India v. Ram Charan and others, AIR 1964 215*. In fact that decision was referred in *Katari* (supra). He, therefore, seeks leave to add

ground in this C.R.A. As the application is pending for admission, leave to amend so as to incorporate this ground is granted. Amendment shall be carried out forthwith.

4. In support of this application, Mr. Godbole submitted that Notice of Motion was dismissed on 8.9.2016. After the Motion was dismissed, on 18.10.2016 on behalf of the present plaintiff reply was filed to Misc. Criminal Application for intervention in Anticipatory Bail Application No.1660/2016. Along with that reply, the complaint dated 5.8.2010 made by the original plaintiff Harbans Kaur Gurbux Singh to the Senior Inspector, Meghwadi police station, Sher-e-Punjab Colony, Andheri, East was enclosed. In this complaint, the original plaintiff had stated that defendant No.2 Pratap Singh Kohli expired in 1994 and his son Mr.Jaspal Singh (defendant No.2(a)) is trying to transfer the plot in his name. He submitted that this material could not be produced before the learned trial Judge while passing the impugned order on 8.9.2016.

5. Mr.Godbole further submitted that while passing the impugned order on 8.9.2016, the learned trial Judge also did not consider the reply filed by the Ex-Chairman of the society

dated 9.1.2016 in Notice of Motion No.3128/2015 and in particular paragraph-2 thereof. In paragraph-2, it is stated that the original plaintiff and also after her death present plaintiff and all the members of the family of Surjan Singh Ahuja were aware that original defendant No.2 had died on 21.5.1994. The original plaintiff made enquiry in that regard in the month of August, 1994 for confirmation about the death of original defendant No.2 from the society. Original plaintiff contacted him personally and showed photocopy of the letter of July, 1994 written by Ms.R.C. Nichani, Advocate for original plaintiff received by Shri C.N. Mehta, Advocate for original plaintiff informing about the death of original defendant No.2. He confirmed to her that original defendant No.2 had expired in London (U.K.) and she also took from the society through him a photo copy of the death certificate of original defendant No.2. Mr. Godbole submitted that this affidavit was not considered by the learned trial Judge while passing the impugned order on 8.9.2016. He has also invited my attention to the correspondence addressed by Advocate C.N. Mehta representing original plaintiff on 29.8.2008 and 3.12.2008. He submitted that liberty may be reserved to the applicant to file review of the

impugned order on the ground of discovery of new and important matter which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or for any other sufficient reason as contemplated by Order XLVII Rule 1 of C.P.C. as also on the ground of error apparent on the face of record in not considering the affidavit made by Ex-Chairman of the society in Notice of Motion No.3128/2015.

6. On the other hand, Mr. Khandeparkar submitted that the letter dated 14.7.1994 addressed by the Advocate for defendant No.2 was not addressed to the Court as required under Order XXII Rule 10A of C.P.C.. He also relied upon Order XXII Rule 4 of C.P.C. to contend that the Advocate appearing for the party who has expired has to intimate the date of death.

7. He submitted that even Advocate C.M. Mehta was not aware of death of defendant No.2 as may be evident from the letter dated 29.8.2008 addressed by him to the Chairman/Secretary of Sher-e-Punjab Co-operative Housing Society Ltd. He further submitted that in case the Court is inclined to grant liberty to defendant No.2(a) to file proceeding

seeking review of the order dated 8.9.2016, all contentions of the parties may be kept open.

8. On the motion made by Mr.Godbole, Civil Revision Application is allowed to be withdrawn with liberty to file review petition and is accordingly disposed of. It is made clear that in case Review is decided against defendant No.2(a), challenge to the impugned orders dated 23.7.2013 as also 8.9.2016 is expressly kept open. The learned trial Judge shall not dismiss the Review Petition on the ground of limitation. Certified copy expedited. All parties, including the trial Court, to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)