

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 11680 OF 2014

Shakuntala Vijayraj Kankaria & Ors. ... Petitioners
Vs.
Nathu Dhondu Shewale & Ors. ... Respondents

Mr. N.R. Bubna, Advocate for the petitioners.
Mr. Manoj Harit i/b. Manoj Harit & Co., Advocate for the respondent
nos. 1, 10(2).

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 14th June, 2017.

P.C.:

Rule. Rule made returnable forthwith. By consent, this
Petition is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 20th
August, 2014 passed by the Joint Civil Judge Senior Division,
Malegaon below Exhibits 67, 68, 69 in Special Civil Suit No. 139 of
2011. The plaintiffs/petitioners have filed the suit for specific
performance. They filed the suit against defendant nos. 9A and 13
who were already dead. Thereafter bailiff's reports were submitted at
Exhibit 9 dated 21st December, 2011 and at Exhibit 12 dated 20th July,
2012 thereby informing that the defendant no. 13 has expired on 9th

May, 2009 and defendant no. 9A has expired on 25th October, 2011. The plaintiffs/petitioners did not take steps to bring the legal heirs of defendant nos. 9A and 13 in time but filed application for bringing their legal heirs after 2 years, i.e., in the year 2014. The said application was rejected on the ground that no sufficient justifiable reason was given. Hence, this Writ Petition.

3. The learned counsel for the petitioners submitted that inadvertently the steps were not taken to bring the legal heirs of deceased defendants. He submitted that it is a suit filed by the petitioners/plaintiffs for specific performance. He submitted that the legal heirs of defendant nos. 9A and 13 if not brought on record, the plaintiffs will not be in a position to get the order in respect of land which is subject matter of the suit agreement wherein these deceased persons have undivided share.

4. The learned counsel for respondent nos. 1 and 10(2), while opposing this petition, supported the order passed by the learned Civil Judge Junior Division. He submitted that no sufficient cause is given by the petitioners/plaintiffs. In support of his submissions, the learned counsel relied on the judgment of the Hon'ble Supreme Court

in the case of **Union of India vs. Ram Charan decided on 30th April, 1963** wherein the Hon'ble Supreme Court has held that why the expression 'sufficient cause' is to be liberally construed. He further submitted that the suit agreement is executed between the petitioners/plaintiffs and respondent/defendant no. 1 and therefore, the presence of the proposed defendants is not required. He further submitted that there is inordinate delay in taking out the application for bringing the legal heirs of deceased defendants, hence the petition is to be rejected.

5. Perused the impugned order. Also perused the application for bringing the legal heirs of deceased defendant nos. 9A and 13 on record and the reply filed by the defendants. It is true that the suit was filed against the dead persons and two reports of the service of summons to that effect were filed by the plaintiffs, i.e., Exhibit 9 dated 21st December, 2011 and Exhibit 12 dated 20th July, 2012. It is true that there is delay of 2 years on the part of the petitioners/plaintiffs. Though the report of the bailiff was available on record, it appears that no notice of the said reports were taken by the party or its respective counsel. However, it is a suit for specific performance. Though the sufficient reason is not to be construed liberally as held

by the Hon'ble Supreme Court in the **Union of India vs. Ram Charan** (*supra*), as it is a suit for specific performance in respect of the land where all the defendants have undivided share in the suit property, in order to avoid any miscarriage of justice, the application of bringing legal heirs is to be allowed. Hence, the order passed by the learned trial Judge is set aside. The legal heirs of deceased defendant nos. 9A and 13 are to be taken on record within three weeks from today subject to payment of Rs.25,000/- to the defendants.

6. The trial Court to expedite the suit as early as possible. Parties to cooperate.

7. Writ Petition is allowed.

(MRIDULA BHATKAR, J.)