

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.144 OF 2017
(Arjun Baburao Jadhav (dead) through LR's Vs. Subhadra @ Ranjana
Dharma Jadhav and others)

Mr.N.B.Patekar, Advocate for the applicants.
Mr.R.R.Karpe, Advocate for respondent Nos.1 to 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 12/06/2018

PER COURT :

1. The LR's of deceased Arjun Baburao seek to challenge the judgment dated 12/12/2011 delivered by the Trial Court in Civil Inquiry Application (Succession) No.7/2011 and further seek to challenge the judgment dated 12/02/2016 delivered by the Appellate Court in RCA No.230/2014 (Old No.111/2011).

2. I have considered the submissions of the learned Advocates for the respective sides. Learned Advocate for the respondents has strenuously defended the impugned judgments. He prays that this civil revision application be rejected with heavy costs.

3. I find from the judgment of the Appellate Court that the opponent (now deceased) was not present on 03/12/2011 when the

applicant led evidence. On the same day, the Trial Court closed the evidence after accepting the 'evidence close *purshis*' from the applicant. The next date was posted for the opponent to lead evidence. Since he was absent, the evidence was closed and the matter was posted for arguments. On 12/12/2011, the Trial Court delivered its judgment which indicates the speed at which the Trial Court proceeded with the matter.

4. The respondents herein strenuously submit on the basis of the observations of the Appellate Court in paragraph No.11 that even before the Appellate Court, the opponent did not put forth a specific case that he desires to cross examine the applicant. The Appellate Court has, therefore, rightly refused to remand the proceedings to the Trial Court.

5. I am of the view that in matters of such nature and, for that reason, in any trial, a reasonable opportunity of cross examining the other side and leading evidence has to be granted. In the instant case, the applicant led evidence on 03/12/2011 and closed the evidence on the same date. The matter was posted to the next date for recording of the evidence of the opponent. Since he was absent, the recording of evidence was closed and a judgment was delivered

on 12/12/2011. In my view, these factors indicate undue haste in the matter. The Trial Court could have imposed costs on the opponent and could have granted him one more opportunity. Ends of justice cannot be achieved by an undue haste in completing the trial in a matter.

6. The Appellate Court could have considered the above aspect purely on the ground that the sole opponent had lost an opportunity of cross examining the applicant, as well as, he could not lead evidence only because the Trial Court has disposed of the proceedings within 8 days from the date on which the applicant led evidence and closed her evidence.

7. Considering the above, this civil revision application is allowed in the following terms :-

[a] The judgment of the Appellate Court dated 12/02/2016 is quashed and set aside. RCA No.230/2014 stands partly allowed. The judgment of the Trial Court dated 12/12/2011 is quashed and set aside and Civil Inquiry Application (Succession) No.7/2011 is restored to the file of the learned Civil Judge, S.D. Newasa.

[b] The litigating sides agree to appear before the Trial Court on 06/07/2018. The opponents would now cross examine the applicant on 06/07/2018 without seeking an adjournment. The

applicant would remain present on 06/07/2018 for her cross examination.

[c] After her cross examination, if the applicant desires to lead further evidence, she would be at liberty to do so.

[d] The opponents shall commence recording of their oral evidence on the date following the closing of evidence by the applicant and would refrain from seeking unnecessary adjournments.

[e] The applicants herein would deposit costs of Rs.8,000/- with the Trial Court on 06/07/2018 as a pre-condition for conducting the cross examination of the original applicant. The said amount would be withdrawn by the original applicant Subhadra Jadhav without conditions.

[f] The Trial Court would decide the said proceedings as expeditiously as possible and preferably on or before 31/10/2018.

[g] The benefits derived by the original applicant pursuant to the impugned judgments which are now quashed and set aside, would be subject to the result of the proceedings before the Trial Court.

(Ravindra V.Ghuge, J.)