

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.6363 OF 2016

Kashinath s/o Vajjnath Suryawanshi
and others

Petitioners

Versus

Anand s/o Kashinath Suryawanshi,
since deceased through his Lrs. &
others

Respondents

Mr.C.R.Deshpande, advocate for petitioners.

Mr.Ajinkya Reddy, advocate for Respondents No.5 to 7.

Mr.M.S.Shaikh, advocate i/by Mr.Sachin Deshmukh, advocate for
Respondents No.1-A to 1-H.

CORAM : M.S.SONAK, J.

DATE : 08th January, 2018.

P.C. :

1 Heard Mr.C.R.Deshpande, learned Counsel for the
petitioner, Mr.Shaikh, advocate for Respondents No.1-A to 1-H and
Mr.Ajinkya Reddy, advocate for Respondents 5 to 7.

2 Petitioner challenges the order dated 29.03.2016 made
by the learned trial Judge permitting the applicants in application
dated 12.06.2015 to come on record as legal representatives of
deceased plaintiff i.e. Anand Kashinath Suryawanshi.

3 Mr.Deshpande, learned Counsel for petitioner no.1,
who is original defendant no.1 in the suit, submits that the
impugned order is made in violation of principles of natural justice
inasmuch as no effective opportunity was afforded to the petitioner

to contest the application dated 12.06.2015. Mr.Deshpande submits that the reply/say so filed by the petitioners, though on record, was not even considered by the learned trial Judge before making the impugned order.

4 Mr.Deshpande, further submits that it has always been the case of petitioners that Anand Suryawanshi, deceased plaintiff, was never son of the petitioner, though he claimed as such. Secondly, Mr.Deshpande points out that the petitioner, in his reply dated 03.08.2015 at paragraph no.5 has specifically stated that one Sharada is the legally wedded wife of Anand and Varsha and other applicants in the application dated 12.06.2015 were, therefore, no legal relations of deceased Anand. Mr.Deshpande submits that this plea has not at all been considered by the learned trial Judge before making the impugned order. Mr.Deshpande relies upon provisions of Order XXII Rule 5 of the Civil Procedure Code to submit that it was the duty of learned trial Judge, before permitting the applicants to the application dated 12.06.2015, to come on record as legal representatives of deceased plaintiff i.e. Anand.

5 Admittedly, this is a suit for partition of the properties. Therefore, in a sense, all the parties are in the nature of plaintiffs to such a suit.

6 The issue as to whether Anand, original plaintiff was at all son of the petitioner cannot be gone into at the stage when the application was only for bringing on record legal representatives of deceased Anand. That issue, is no doubt required to be gone into

in the main suit for partition and there is no reason to apprehend that such issue will not be gone into on account of the order which is impugned in this petition.

7 Order XXII Rule 5 of the Code of Civil Procedure provides that where a question arises as to whether any person is or is not legal representative of deceased plaintiff, such question shall be determined by the Court. The question, as to whether Anand, original plaintiff, was at all son of the petitioner, is certainly not the question, which is required to be considered under Order XXII Rule 5 of the Code of Civil Procedure.

8 From the reply filed by the petitioner on 03.08.2015, no doubt the petitioners have stated that one Varsha was not the legally wedded wife of Anand and, therefore, Varsha and other applicants, who claim through Anand and Varsha, are not legal representatives of deceased plaintiff Anand.

9 There is also some dispute raised as regards applicants no.5, 6, 7 and 8 being legal representatives, since, it is alleged that the said applicants have married long ago and residing at their respective matrimonial homes.

10 From perusal of the objection raised by petitioners, it cannot be said that there were serious issues to be determined at the stage of permitting the applicants to come on record as legal representatives of deceased Anand. The question, as to whether Varsha was the legally wedded wife of Anand or not or as to whether the applicants are at all entitled to claim any right in the

estate of plaintiff Anand, are all questions which will have to be decided in the main suit. Merely because the impugned order has been made, it does not mean that such question stand foreclosed. However, this is not a case where applicants were required to be non suited even at the stage of being brought on record as legal representatives of deceased Anand.

11 This is also not a case of serious failure of principles of natural justice. Assuming that there is some deficit, same has been made good in this Court. The contentions raised by petitioners have been duly considered. However, the contentions are not of the nature to warrant exercise of extraordinary jurisdiction under Article 227 of the Constitution and interfere with the impugned order. This is more so because the position has been clarified and the questions or objections now raised by the petitioners are directed to be considered in the main suit itself. With the aforesaid clarification, therefore, this petition is dismissed. There shall be no order as to costs.

12 All contentions of all the parties, on merit, are specifically kept open. All concerned to act upon authenticated copy of this order.

13 In view of disposal of petition itself, pending Civil Applications No.10973/2016 and 10974/2016 do not survive and stand disposed of.

M.S.SONAK
JUDGE