

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10051 OF 2017
(Rajkorbai Manga Rajput and others Vs. Chandanbai Lotansingh
Rajput and others)

Mr.R.S.Wani, Advocate for the petitioners.
Mr.S.V.Natu, Advocate for respondent No.1, 3 and 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 19/11/2018

PER COURT :

1. The petitioners are original defendants in Reg.Civil Suit No.4/2000 which has been instituted by respondent No.1 Chandanbai who is the widow of Lotansingh. The said suit was decreed. Consequentially, the LR's of the deceased defendant preferred Reg. Civil Appeal No.7/2011. By the impugned order dated 27/06/2017, the application Exh.19 filed by 2 persons claiming to be the daughters of Lotansingh and Chandanbai, was allowed and these 2 persons were permitted to be arrayed as co-plaintiffs alongwith their mother Chandanbai.

2. The grievances of the petitioners are as under :-

[a] The original plaintiff Chandanbai was never the wife of Lotansingh, who was a bachelor.

[b] The 2 persons claiming to be the daughters of Lotansingh

and Chandanbai are not the biological daughters of Lotansingh.

[c] As the suit was filed for partition, the limitation prescribed under Article 110 would bar the claim of these 2 daughters since they have sought to be arrayed in the litigation after 12 years.

[d] The defendants had consistently contended that the suit was rendered untenable as it suffered non-joinder of necessary parties.

3. Learned Advocate appearing on behalf of the original plaintiff / Chandanbai and the 2 daughters, contends as under :-

[a] The defendants had raised an objection that these 2 daughters were not arrayed as plaintiffs and hence the suit suffers from non-joinder of parties.

[b] The defendants always believed that as Chandanbai had not included the 2 daughters as co-plaintiffs, the suit would be rendered untenable.

[c] It is only for self serving purposes that the objection is now been raised that Lotansingh was unmarried and had no biological children.

[d] The said objection obviously is frivolous as the defendants themselves had averred in the written statement that Chandanbai had not arrayed her 2 daughters as co-plaintiffs.

[e] The Law of limitation prescribed under Article 110 would not be applicable for 2 reasons viz, firstly, that the two daughters would only be the co-sharers if it comes to the share of the widow of Lotansingh and secondly, as the two daughters

had declared before the Appellate Court that they do not want any share from the property of their father and his entire share be passed on to the mother Chandanbai who is the original plaintiff.

4. I find from the above and the record available that the defendants had sought to defeat the claim of the plaintiff by contending that the suit is untenable since 2 necessary parties have not been arrayed as co-plaintiffs. The defendants had taken the stand that the daughters of Lotansingh who were married, were not the co-plaintiffs.

5. No doubt, that contradictory stands can be taken by the defendants in their written statement. Nevertheless, the stand that Lotansingh was never married and had no biological children, would be subject to adjudication if such an objection has been specifically raised in the written statement. In this backdrop, the addition of the two daughters as co-plaintiffs cannot be said to be impermissible in Law and notwithstanding that it would nullify the objection raised by the defendant that these two daughters have not been arrayed as co-plaintiffs and hence the suit suffers from non-joinder of necessary parties.

6. In so far as the contention of the defendants that the law of limitation would bar a claim made by these 2 daughters under Article 110 is concerned, it is obvious that the said period of 12 years of limitation would commence from the date of the knowledge of the person who has been excluded. So also, the Trial Court has dealt with the aspect that the plaintiff was never advised to add the daughters as co-plaintiffs and the omission to include them was on account of the plaintiff being a tribal, an illiterate person and being unaware of the effect of the exclusion of the 2 daughters.

7. The Trial Court has dealt with the said aspect and has recorded that Lotansingh had left a widow and 2 daughters who have approached the Appellate Court after realizing that they were excluded from suit on account of their mother being unaware of the necessity to add them as parties. They have sought such addition in order to ensure that the suit does not result in a dismissal merely because they were not added as co-plaintiffs. These two daughters have also declared before the Appellate Court that their entire shares would rest with their mother Chandanbai and therefore they do not seek any additional share to be carved out from the shares of the other defendants.

8. Considering the above and the peculiar facts of the case, I do not find that the defendants would suffer any prejudice as their shares would remain intact. The addition of the two daughters would put to rest the objection of non-joinder of necessary parties and would further achieve the objection for which Chandanbai had filed a suit.

9. Considering the above, since I do not find that the impugned order could be branded as being perverse or erroneous or likely to cause gross injustice to the petitioners, no interference is called for.

10. This petition, being devoid of merit, is dismissed.

11. Needless to state, the conclusions of the Appellate Court and this Court are restricted to application Exh.19 filed by the 2 persons seeking addition of parties.

(Ravindra V.Ghuge, J.)