

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12716 OF 2017

SUNANDABAI KAILAS CHAVAN
VERSUS
RATNABAI KAILAS CHAVAN AND OTHERS

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Advocate for the Petitioner : Shri Rane Girish S..
Advocate for Respondents 1 to 4 : Shri A.S.Sawant.
Advocate for Respondent 5 : Shri Goyanka M.K. a/w Shri Manoj Shinde.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 30th July, 2018

Per Court:

1 The Petitioner is aggrieved by the order dated 17.01.2017 by which, the Trial Court has rejected her application Exhibit-20 filed for seeking intervention in Civil Miscellaneous Application No.6/2016. By the said application, she desired to intervene in the said succession certificate proceedings claiming to be the wife of the deceased Kailas Chavan.

2 It is pointed out that the Petitioner has filed a separate Civil Miscellaneous Application No.33/2017 before the same Court wherein, all the applicants in CMA No.6/2016 have been arrayed as Respondents. Reliance is placed upon the judgment of the learned Division Bench of this Court in the matter of *Sanjeev Indravadan Dani vs. Rupal Sanjeev Dani*, 2010 (1) Mh.L.J. 918.

3 The learned Advocate for Respondent Nos.1 to 4 has strenuously opposed this petition. The contention is that the impugned order is well reasoned and proper. Unless an order appears to be perverse or erroneous, no interference is called for merely because a second view can be taken. In the alternative, it is submitted that if this Court would order clubbing of the two applications, these Respondents are agreeable subject to the request that these proceedings be decided within a specific time frame.

4 The learned Advocate for the MSRTC submits that the Corporation does not have any say in these proceedings as they would consider the disbursement of retiral benefits of the deceased person, strictly as per the succession certificate.

5 The learned Division Bench in *Sanjeev Dani (supra)* has referred to the law laid down by the Honourable Supreme Court and has observed in paragraph 12 as under :-

"12. We may now turn to the merits of the grievance of the Appellant regarding the power of the Family Court to consolidate trial of two separate petitions pending before it between the same parties under section 9 and section 13 of the Hindu Marriage Act. Indeed, there is no express provision either in the Hindu Marriage Act or for that matter in the Family Courts Act or the Code of Civil Procedure, which authorises the Court to consolidate the trial of two separate Petitions pending before it. Nevertheless, such power can be exercised by the Court by invoking its inherent powers, when it is necessary for the ends of justice or

to prevent abuse of the process of the Court. This position is no more *res integra*. The Apex Court in the case of *Chitivalasa Jute Mills v. Jaypee Rewa Cement* [(2004) 3 SCC 85: AIR 2004 SC 1687] held that unless specifically prohibited, the civil court has inherent power to make such orders, as may be necessary for the ends of justice or to prevent abuse of the process of the Court. It is observed that consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. It is held that complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. It further went on to observe that in that case, the parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials; after the evidence having been recorded, common argument need to be addressed followed by one common judgment. Following the dictum of the Apex Court, it is open to the Family Court to direct consolidation of two Petitions while exercising its inherent powers under section 151 of the Code of Civil procedure for meeting the ends of justice. In yet another recent decision in the case of *Premlata Nahta* (*supra*), the Apex Court observed that the Court has power to consolidate the suits in appropriate cases. However, the consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The Apex Court further expounded that the main purpose of consolidation is therefore to save costs, time and effort to make the conduct of several actions more convenient by treating them as one action. It is further observed that jurisdiction to consolidate arises where there are two or more matters or causes pending in the Court and it appears to the Court that some common question of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arises out of same transaction or series of transactions; or that for some

other reason it is desirable to make an order of consolidating the suits. Notably, in the case of *SBI V/s. Ranjan Chemicals Ltd.* reported in 2007 (2) *Mh.L.J. (SC) 787 : (2007) 1 SCC 97*, the argument considered by the Court was that order of joint trial can be passed only if there is consent of both sides. This argument did not find favour with the Apex Court. The Apex Court has held that a joint trial can be ordered when (i) if common question of law or fact arises in both the proceedings or right to relief claimed in them is in respect of or arises out of the same transaction or series of transactions, (ii) where plaintiff in one action is the same person as defendant in another action and if one action can be ordered to stand as counterclaim in the consolidated action and (iii) when the Court finds that ordering of such trial would avoid separate overlapping evidence being taken in two causes put in suit and it would be more convenient to try them together in the interest of parties and for effective trial of the causes. The Court has opined that it is not necessary that all question or issues that arises should be common to both actions. In that, even if some issues and some evidence are common, it would be sufficient for a joint trial, especially when the two actions arise out of the same transaction or series of transactions. The Court unambiguously opined that the power of ordering a joint trial of causes in the court is in exercise of its inherent powers. Keeping in mind the settled legal position deduced from the above said decisions, there is hardly any scope for argument that the Family Court which undoubtedly is also governed by the provisions of Code of Civil Procedure, does not have jurisdiction to pass order of consolidation of two petitions pending before it even if the ends of justice so demand. Indubitably, inherent powers under section 151 of the Code are certainly available to the Family Court, notwithstanding the provisions in the Family Courts Act. There is no provision in the Family Courts Act, which would inhibit the Family Courts from exercising its inherent power available under section 151 of the Court."

6 Considering the above and since the contentions of the litigating sides need to be considered by the Trial Court on their merits, I am not advertng to the entire submissions of the learned Advocates. The disputed question is that Smt.Ratnabai, who claims to be the first wife of the deceased Kailas, was involved in separation proceedings with the deceased Kailas. While marrying the Petitioner (Sunandabai), the deceased Kailas had taken a stand that being a tribal and since old Hindu law as well as various traditions of the tribal community were applicable, he has divorced Ratnabai and by following conventions and traditions, he had married the Petitioner (Sunandabai). Unless these aspects are considered by the Trial Court, the succession certificate cannot be granted.

7 In view of the above and considering the law laid down by the Honourable Supreme Court which has been followed in *Sanjeev Dani (supra)*, this Writ Petition is partly allowed. The impugned order dated 17.01.2017 is quashed and set aside and the application Exhibit 20 stands allowed. Consequentially, Civil Miscellaneous Application No.6/2016 and Civil Miscellaneous Application No.33/2017 shall be clubbed and shall be dealt with together by the learned Civil Judge, Senior Division, Amalner.

8 The litigating sides agree to appear before the Trial Court on 13.08.2018. They shall tender a copy of this order obtained from the official website of this Court, before the Trial Court.

9 Considering that the retiral dues of the deceased Kailas are to be disbursed by the employer and that is dependent on the grant of the succession certificate, the Trial Court shall decide both the proceedings together as expeditiously as possible and preferably on or before 31.12.2018.

kps

(RAVINDRA V. GHUGE, J.)