

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.9449 OF 2018

Kantilal Dhanjibhai Patel & Ors.	 Petitioners
V/s.	
Francis Anton Assessao & Ors.	 Respondents

Mr. Gautam Ankhad, with Mr. Ankur Shah, i/by Ms. Gauri D. Dhale and Mr. Iqbal Siddiqui, for the Petitioners.

Mr. Aditya Shivalkar, with Mr. Tejas P. Shah, i/by M/s. Narayanan and Narayanan, for Respondent Nos.7 to 9.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 25TH APRIL, 2018.

P.C. :

1. Heard Mr. Ankhad, learned counsel for the Petitioners, and Mr. Shivalkar, learned counsel for Respondent Nos.7 to 9.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 6th March 2018, passed by the City Civil Court, Mumbai, thereby issuing notice to Defendant No.7, in view of the controversy raised before it as to whether Defendant No.7 has already expired and is no more or whether the substituted service of pasting of the summons on Defendant No.7 is legal and valid or not. The Trial Court has, vide its detailed order, thought it

fit that, in order to decide this controversy, it would be proper to issue notice to Defendant No.7 and the Office of the Sheriff was directed to make enquiry about Defendant No.7 at the given address and then file the service report.

3. There is absolutely nothing adverse against the Petitioners in the said order. It is also not causing any prejudice to the Petitioners, as the impugned order passed by the Trial Court is purely innocuous and was passed to arrive at the truth, in the light of the rival contentions raised that Defendant No.7 is no more or whether the service of summons by way of pasting is duly made on her. Despite that, the Petitioners are challenging the said order. Hence, the Writ Petition needs to be quashed.

4. However, at this stage, the 'Draft Amendment' is filed today, challenging the subsequent order passed by the Trial Court on 16th April 2018, on the receipt of the Sheriff's report.

5. In view of the Sheriff's report, the Trial Court was constrained to hold that Defendant No.7 is reported to be dead on 27th May 1998 itself. It was also observed by the Trial Court that the fact of death of Defendant No.7 had already been reported and now the said fact is confirmed from the Sheriff's report produced at Exhibit-35 to the Petition. The Trial Court has, however, now in view of the fact that this

Court is seized of the matter, kept the matter before it tomorrow, i.e. on 26th April 2018, for passing final order of abatement against Defendant No.7.

6. This Court fails to understand what grievance Petitioner can have against this order. Once the Sheriff's report is received, informing and confirming that Defendant No.7 is dead long back, the Petitioners have to either accept the fact that Defendant No.7 is no more and, accordingly, to make the necessary application for setting aside the abatement and to bring the legal heirs of Defendant No.7 on record, or, in the alternate, if the Petitioners are not ready to accept the fact that Defendant No.7 is no more, then, the Petitioners have to challenge the report of the Sheriff before the Trial Court. Instead of adopting any of these two modes, the Petitioners have come to this Court seeking amendment of the Petition, which is clearly a mode or the way not warranted by the law.

7. Writ Petition, therefore, being without merits, stands dismissed.

8. Parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]