

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4313 OF 2018

Manohar Nilkanth Bhagwat (deceased)
Through LRs.

...Petitioner

Versus

Vinayk V. Bhopatkar (deceased) Through
LRs.

...Respondents

Mr. Rajesh S. Datar, for the petitioner.
Mr. Sangharsh Waghmare, I/b Ravi P. Jadhav, for respondent
nos.1(1) to 1(5).

CORAM: M. S. SONAK, J

DATED: 18th December, 2018

PC:-

1. At the request of Mr. Datar, the learned Counsel for the petitioner, respondent no.2 is permitted to be deleted from the array of parties, since the presence of respondent no.2 is not required for the purpose of present petition.

2. The challenge in this petition is to the order dated 12th December, 2017 made by the Trial Court permitting the respondent (original plaintiff in RCS No.557 of 1997) to implead Tushar Manohar Bhagwat as defendant in the said suit.

3. Mr. Datar, the learned Counsel for the petitioner points out that the original defendant in the suit was Manohar Bhagwat. He expired on 22nd June, 2004. Thereafter, the respondent/plaintiff took out application to bring on record legal representatives of deceased Manohar Bhagwat. This was,

however, dismissed by order dated 28th June, 2016, even Review Petition against the order dated 28th June, 2016 was rejected on 10th January, 2017. After all this, the respondent/plaintiff applied to implement of the legal heirs of Manohar Bhagwat by resort to provisions under Order I Rule 10 of Civil Procedure Code. Mr. Datar submits that this is clearly impermissible and the Trial Court exceeded jurisdiction in making the impugned order.

4. The learned Counsel for the respondent/plaintiff points out that way back on 30th June, 2008, Tushar Manohar Bhagwat himself applied for coming on record and this application was duly granted. He submits that on account of procedural wrangles, substantive justice he wants to may suffer. On this ground he urges dismissal of the present petition.

5. Once, the respondent – plaintiff's application for bringing legal representatives of late Manohar Bhagwat came to be rejected by orders dated 28th June, 2016 and 10th January, 2017, it was not open for them to seek the same relief by resort to the provisions under Order I Rule 10 of CPC. The learned Trial Judge clearly exceeded jurisdiction in making the impugned order, which has the effect of setting aside its earlier order dated 28th June, 2016 and 10th January, 2017. On the short ground, the impugned order dated 12th December, 2017 is required to be set aside and is hereby set aside.

6. The correct remedy for respondent no.5 was to challenge the orders dated 28th June, 2016 and 10th January, 2017 by which they are not permitted to bring on record the legal

representatives of Manohar Bhagwat. The learned Counsel for the respondent submits that since the respondent – plaintiff was not correctly advised, the application came to be filed under Order I Rule 10 of CPC.

7. In such circumstances, no relief can be granted to the respondent – plaintiff in the present petition, it is clarified that the respondent – plaintiff would be at liberty to challenge the orders dated 28th June, 2016 and 10th January, 2017 by taking out an appropriate proceedings as permissible under the law. Needless to add, if such proceedings are taken out, the same will be decided at their own merits and in accordance with law.

8. With the aforesaid observations and liberty, therefore, the present petition is allowed.

9. Rule made absolute in terms of prayer clause (a).

10. All concerned shall act on an authenticated copy of this order.

[M. S. SONAK J.]