

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4549 OF 2018

Vinod Murlidhar Daspute .. Petitioner
Vs.
Balkrushna Triambak Wani (Pingale)
(since deceased thru. Lrs.)
1A. Kailas Balkrushna Wanie (Pingale) and ors. .. Respondents

Mr.Milind Sathaye, for the Petitioner.
Mr.Vivek Salunke, for Respondents No.1A to 1F.

CORAM : M.S.KARNIK, J.

DATE : 14th DECEMBER, 2018

P.C. :

. The challenge in this Petition is to an order dated 09/04/2018 passed below Exhibit 253 in Special Civil Suit No.42 of 2011. The application Exhibit 253 is filed by the son of defendant No.12 – Yamunabai Murlidhar Dashpute for impleading him as legal heir of Yamunabai. It is not in dispute that Yamunabai died on 08/10/2010. A suit for partition is instituted by the plaintiffs in the month of March 2011. As on

the date when the suit was filed, Yamunabai had already expired. Pursuant to the issuance of the suit summons, suit summons were shown to be served on the defendant No. 12- Yamunabai on 25/03/2013. Though Yamunabai died on 08/10/2010, it is the contention of the plaintiffs that the petitioner accepted service of summons on behalf of defendant No. 12 – Yamunabai on 25/03/2013. The application Exhibit 253 is filed for bringing on record the petitioner as legal heir of defendant No.12 - Yamunabai. This application is filed in January 2018.

2. Learned Counsel for the petitioner Shri Sathaye impugning the order passed by the trial Court submits that Yamunabai was made as party defendant No.12 to the suit. As on the date of the filing of the suit, Yamunabai had already died. The service of suit summons on the dead person itself would render service of suit summons ineffective. In his submission, assuming the petitioner accepted the suit summons, the same is inconsequential as there cannot be service on a dead

person. According to him, as he is the legal heir of defendant no.12 Yamunabai it is necessary for him to be on record. He submits that in the suit, the trial Court obviously will decide the rights of the parties and shares to which the family members are entitled. According to him in the event the trial Court comes to the conclusion that defendant No.12 is entitled to some share in the suit property, the said share will naturally devolve upon the petitioner. If he is not a party, he will be deprived of his rightful share in the suit property.

3. Learned Counsel for the Respondents No. 1A to 1F- original plaintiffs on the other hand submits that the suit summons is duly served on Yamunabai and same has been acknowledged by the petitioner under his signature as far back as on 25/03/2013. Learned Counsel for the original plaintiffs submits that all along the petitioner never brought this notice of the trial Court. At the very fag end when the arguments are to be heard that the application is filed for bringing the petitioner on record as legal heir of Yamunabai. Learned Counsel for the

original plaintiffs submits that this application is filed only with a view to protract the litigation. Having received suit summons as far back on 25/03/2013, the petitioner waited till the suit reached the stage of final hearing. In his submission the trial Court was justified in rejecting the application on the ground of delay.

4. I do not find any infirmity in the approach of the trial Court. The conduct on the part of the petitioner in approaching the trial court at the very fag end of the proceedings in the trial does not appear to be bonafide. As per the order of the trial Court, it appears that the suit summons issued in the name of defendant No. 12 - Yamunabai was received on behalf of Yamunabai by the petitioner on 25/03/2013. Though it is averred in the application - Exhibit 253 that the petitioner got knowledge about the suit instituted by the plaintiffs only on 25/02/2018 during the death ritual of one of the common relatives, this explanation does not appear to be plausible. The trial Court in paragraph 12 of the order has

observed thus :

“12. Apart from aforesaid legal aspects, as stated hereinabove defendant no. 12 intentionally remain away from the suit, in spite of service of suit summon at his residential address a can be seen from Exhibit 67, he is not entitled to relegate back the suit from the stage of final argument to the stage of impleading him party to the suit and permitting him to file written statement, adducing evidence and recalling plaintiff's witnesses for cross-examination. If such sort of practice is allowed by the Court in that circumstance, the unscrupulous defendant would drag the hearing of the suit for years together, by intentionally waiting until fag end of the suit, in spite of knowledge of the suit.”

5. I therefore do not find any reason to interfere with the order passed by the trial Court rejecting the application.

6. I am however inclined to observe that at the stage of deciding application Exhibit 153, it was not necessary for the trial court to have gone into question whether the defendant No.12 - late Yamunabai, mother of the applicant was necessary

party to the suit at the time of institution of the suit. The trial Court therefore shall not be influenced by any of the observations made in the impugned order on this aspect while finally deciding the suit. This aspect is kept open for the consideration of the trial Court to be decided on its own merits if necessary.

7. Subject to what is stated above, the petition is rejected.

(M.S.KARNIK, J.)