

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10961 OF 2018

KAUSHALYABAI APPARAO PATIL
VERSUS
SHANTABAI NAMDEORAO DOIFODE

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Advocate for Petitioner : Shri Solanke Shrikrashna B.
Advocate for Respondent : Shri Bilolika Upendra B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 05, 2019

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PER COURT :-

1. While issuing notice on 1.10.2018, I had passed the following order:-

"1. The petitioner who is appellant before the learned District Judge - 1, Kandhar Link Court, Mukhed, in R.C.A. No 07/2003, is aggrieved by the order dated 02/08/2018, by which, application Exhibit 66 filed by the petitioner praying for permission to bring the L.R.S. of deceased/appellant No. 1, on record after a delay of 10 years has been rejected.

2. Contention is that though appellant No. 1 namely Apparao passed away on 11/10/2007, the second appellant lost sight of the fact that his LRS had to be brought on record. In Second Appeal no. 245/1993, the LRS of Apparao were brought on record by this petitioner through an amendment. The Trial Court has rejected Exhibit 66 for the reason that 10 years delay was caused.

3. *Prima facie, I find that when the petitioner brought the L.R.S. of Apparao on record in the Second Appeal before this Court, he is precluded from taking a stand that he did not realize that the LRS of Apparao should have been brought on record even in RCA No. 07/2003. He, therefore, cannot plead ignorance. Nevertheless, I find that if the LRS of Apparao are not brought on record in RCA No. 07/2003, the said LRS are likely to suffer an irreparable harm and serious prejudice. It is informed that the Appeal is still pending before the learned Appellate Court.*

4. *Issue notice to the respondent, returnable on 26/10/2018. Hamdast is granted. Until the returnable date, the Appellate Court would adjourn RCA No. 07/2003, only if the petitioner deposits an amount of Rs. 10,000/ before the Appellate Court on/or before 20/10/2018. If the amount is not deposited, the Appellate Court would proceed to decide the Appeal expeditiously on its own merits.*

5. *Copies of the petition paper book to be supplied on/or before 09/10/2018, failing which, this petition shall stand dismissed without reference to the Court on 10/10/2018. "*

2. Learned Advocate for the respondent has strenuously opposed this petition and contends that costs may be imposed while dismissing this petition. He draws my attention to the impugned order and contends that in so far as RCA No.7 of 2003 (Old No. RCA 78 of 1996) is concerned, the delay caused in bringing the L.Rs. on

record under Order XXII Rule 9 of the CPC, is enormous and the appellate Court has, therefore, rightly rejected Exhibit 66.

3. In principle, I would not have interfered with the impugned order dated 2.8.2018 passed by the appellate Court. However, it can not be ignored that the said appeal is still pending and if the L.Rs. of appellant No.1 are not brought on record, these L.Rs. would suffer an irreparable loss and grave hardships since the suit property is an immovable property being an agricultural land admeasuring 1 Hectare and 45 Ares. Had the appeal been decided or disposed off and if these petitioners would have woken up after ten years, they would stand no chance in the Court of law, since the litigation has to attain finality at some stage. Since the appeal is still pending and before the decision in the appeal, when these applicants have approached the Court seeking leave to bring the L.Rs. of deceased appellant No.1 on record, I find that this case can be looked at with pragmatism.

4. The petitioner is the widow of deceased Apparao. She is already appellant No.2 in the pending appeal and as such, one L.R. of Apparao is already on record. Issue is as regards bringing the three daughters of Apparao and appellant No.2 on record.

5. Learned Advocate for the respondent rightly submits that Exhibit 66 does not contain the names of the daughters, whom the petitioner desires to bring on record. He, therefore, submits that such lapse on the part of the petitioner is fatal and if this Court intends to consider the case of the petitioner, further costs may be imposed and the entire costs be granted to the respondent.

6. I find that the submission of the respondent deserves consideration. Appellant No.2, who is herself a legal heir of Apparao, has failed to state the names of her daughters in whose interest Exhibit 66 was filed. As recorded above, since the appeal is pending for 15 years and addition of the L.Rs. need not delay the appeal any further, I find that an additional costs of Rs.10,000/- (Rs. Ten Thousand only/-) can be granted to the respondent and the petitioner can be permitted to bring her three daughters on record in the appeal.

7. In view of the above, the Writ Petition is allowed. The impugned order dated 2.8.2018 is quashed and set aside. Exhibit 66 is partly allowed with the following directions:-

(A) The amount of Rs.10,000/- (Rs. Ten Thousand only/-) already deposited by the petitioner before the appellate Court would be withdrawn by the respondent

herein without conditions.

(B) The petitioner shall now deposit an amount of Rs.10,000/- (Rs. Ten Thousand only/-) before the appellate Court, on/or before 25.3.2019 and the said amount shall be withdrawn by the respondent herein, without conditions.

(C) The names of the three daughters shall be brought on record in the pending appeal, on the same day 25.3.2019 by the second appellant Kaushalyabai.

(D) If the paper book is ready, the petitioner shall forthwith carry out the amendment in red ink in the cause title of the appeal memo, on 25.3.2019. Newly typed amended copy of the appeal is not necessary.

(E) The litigating sides would conclude their oral submissions on/or before 5.4.2019 keeping in view that the appeal was lodged in 1996 and is pending final hearing for 23 years.

(F) The learned District Judge-1 shall endeavour to decide RCA No.7 of 2003 as expeditiously as possible and on/or before 30.4.2019.

(G) The learned Judge is at liberty to refuse adjournments to the litigating sides.

(RAVINDRA V. GHUGE, J.)

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