

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.11743 OF 2018
(Kamalabai Pramod Tamboli and others Vs. Rajendra Rupchand
Chavan (Tamboli) and others)
IN
APPEAL FROM ORDER NO.44 OF 2018

Mr.R.R.Mantri, learned Advocate for the applicants.
Mr.S.V.Natu, Advocate for respondent Nos.1,3,4,5-A to 5-E and 6 to
8.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 30/01/2019

PER COURT :

1. Learned Advocate for the applicants submits that this application was filed keeping in view the order passed by this Court on 27/07/2018 recording the statement of learned Advocate Mr.Abhyankar that respondent Nos. 2 and 5 are no more and that their legal representatives are already on record and that he has instructions to appear on their behalf. This order was followed by the order dated 30/08/2018 wherein the statement of the appellant was recorded that deceased respondent Nos. 2 and 5 are not already on record and the Advocate had made a factually incorrect statement.

2. It was pointed out that deceased respondent No. 2 Narmadabai had passed away. One of her sons respondent No.5 Ashok had also

passed away. LR's of Narmadabai were already on record, though the LR's of Ashok were not brought on record. In this backdrop, this Court directed the appellant to take steps to bring the LR's of deceased respondent Nos. 2 and 5 on record.

3. Learned Advocate for the appellants now makes a two fold submission. Firstly, that this civil application can be disposed of and the appellants would make out a case against the respondents for not bringing the LR's of Ashok on record in the first appeal before the Appellate Court. It is clarified that coincidentally, the sons of Narmadabai were on record before the First Appellate Court and hence it can be presumed that her LR's were on record. Secondly, that a false statement has been made by Rajendra Rupchand Chavan (Tamboli) on 27/07/2018 through Advocate Mr.Abhyankar that the LR's of respondent No.2 Narmadabai and respondent No.5 Ashok are already on record and he has instructions to appear. He, therefore, submits that action for making a false statement needs to be initiated against Rajendra and all those respondents on whose behalf Adv.Abhyakkar has caused an appearance.

4. Mr.Natu, learned Advocate submits that no grievance can be made as regards Narmadabai since her LR's' were factually on record

before the First Appellate Court and her passing away can lead to the presumption that her LR's are on record. Mr.Abhyakar was appearing for all of them. In so far as the demise of Ashok is concerned, it has become obvious that learned Advocate Mr.Abhyankar was not properly instructed by Rajendra. Adv.Abhyakar has no reason to have personal knowledge about who are the LR's of Ashok. He made a statement only on instructions from Rajendra. He further adds that Rajendra is a rickshaw driver and is not conversant with the intricacies of Law. Therefore, he may not be aware as to the effect of making an incorrect statement which may not be an intentional or deliberate statement.

5. Mr.Mantri opposes the said submissions contending that the original appellants before the First Appellate Court, including Rajendra, had failed in bringing the LR's of deceased Ashok on record and now they will have to suffer the consequences in the present proceeding in this Court. To overcome the same, he has deliberately made a false statement. He, therefore, prays that action be initiated against Rajendra and this civil application be disposed of.

6. In view of the above, this civil application is disposed of keeping open the liberty to the appellants to canvass their grounds as regards

all LR's of Narmadabai and the LR's of Ashok having not been brought on record before the First Appellate Court. However, without going into much details as regards the controversy surrounding the statement made by Rajendra, I deem it appropriate to direct Rajendra to tender a written apology in this Court and with an undertaking that he would be careful while briefing the learned Advocate appearing on his behalf.

7. List the AO for admission hearing on 26/02/2019 in the "Urgent Admissions category". Reply if any, to be filed prior to the said date.

(Ravindra V.Ghuge, J.)