

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO.11508 OF 2018

JUGALKISHOR DWARKADAS LOYA AND OTHERS
VERSUS
PURUSHOTTAM GULABCHAND LOYA AND OTHERS

.....
Advocate for Petitioners : Mr. G. R. Syed
Advocate for Respondents : Mr. S. M. Vibhute
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CORAM : V. K. JADHAV, J.
DATED : 7th NOVEMBER, 2019

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. Deceased Purushottam had instituted Special Civil Suit No. 26 of 2017 for decree of partition and separate possession. During pendency of the suit, deceased Purushottam died. The respondent Nos. 2 to 4 herein had filed an application Exh.107 for substituting them in place of deceased Purushottam as his legal heirs. The petitioners had strongly resisted the said application by filing say at Exh.112. Learned Judge of the trial court has partly allowed the said application Exh.107 and recorded the finding to the effect that the respondent No.2 Nanda and respondent No.4 Vedant are the only legal heirs of deceased Purushottam and they be impleaded as legal heirs of deceased Purushottam. Hence, this writ petition.

3. Learned counsel for the petitioners submits that respondent No.3 had not filed application under Order XXII Rule 5 of C.P.C. Consequently, the trial court has not conducted any enquiry as contemplated under Order XXII Rule 5 of C.P.C. for determination of the question as to the legal representatives. Learned counsel submits that this writ petition thus deserves to be allowed by setting aside the order passed below Exh.107.

Learned counsel for the petitioners in order to substantiate his submissions, placed reliance on the judgment of the Supreme Court in the case of ***Karedla Parthasaradhi vs. Gangula Ramanamma (D) through L.Rs. and others***, reported in ***2015 AIR SCW 377***.

4. Learned counsel for the respondents submits that though it is not made clear on the application Exh.107 as to whether the same has been filed under Order XXII Rule 5 of C.P.C, however, on perusal of the impugned order, it is manifest that the trial court has considered the application in the light of provisions of Order XXII Rule 5 of C.P.C., conducted enquiry into the matter, heard both sides in detail, considered the documents placed on record and passed a reasoned order. Learned counsel submits that there is no substance in this petition and even if the matter is remanded by directing the respondents to file an application under Order XXII Rule 5 of C.P.C., no specific purpose would be served.

5. On perusal of copy of application Exh.107 at Exhibit B of the compilation, it appears that without quoting any provision, the said application has been filed for bringing the respondents on record to substitute the deceased plaintiff. It further appears from the copy of the say Exhibit C, that the present petitioners have raised objection to the extent that the proposed legal representative No. 1/1 (respondent No.2 herein) is not legally wedded wife of deceased Purushottam. It has been contended that deceased Purushottam married first time with one Karunabai in the month of July, 2003 and out of the said matrimonial wedlock, Karunabai gave birth to one daughter – Payal. At present said Payal is residing at Ghatnandur. Said Karunabai expired in the month of November, 2004. It is also contended in the said say that the deceased Purushottam second time married with present respondent No.2 Nanda i.e. the proposed legal heir in the month of May 2005. However, prior to marriage with deceased Purushottam, marriage of proposed legal heir No. 1/1 Nanda took place with another person. The proposed legal heir No. 1/2 daughter Sakshi is born to Nanda from her previous husband. The petitioners have raised specific ground that the proposed legal heir 1/1 (respondent No.2 herein) without divorce from her previous husband, married with deceased Purushottam for second time. It is therefore stated that the proposed legal heir Nos. 1/1 and 1/3 cannot claim to be the legal heirs of deceased Purushottam.

6. On perusal of the impugned order, it appears that the trial court has heard both sides at length and also perused the record. It has also brought to the notice of the trial court that said daughter Payal, born to deceased Purushottam from his first wife, has been given in adoption and a certified copy of the registered adoption deed dated 7.7.2008 was produced before the trial court. Defendant No.10 and her husband have adopted Payal from deceased plaintiff under registered adoption deed. The trial court, therefore, has held that Payal is no more legal heir of deceased Purushottam. So far as the status of proposed legal heir No. 1/1 (respondent No.2 herein) is concerned, the trial court has considered the certified copy of compromise decree in H.M.P. No. 44 of 2014. One Subhash Rameshwar Kabra, resident of Jalna, had filed petition for divorce against the proposed legal heir No. 1/1 (respondent No.2 herein) and on 17.3.2005 the compromise took place between them and their marriage has been dissolved in terms of the compromise by a decree. So far as the proposed legal heir No. 1/2 Sakshi is concerned, the trial court has also considered that said Sakshi is born to the proposed legal heir No. 1/1 Nanda from her first husband and as such, she cannot substitute deceased Purushottam as his legal heir in the suit.

7. In view of above, even though no specific provision is quoted either in the application or in the impugned order, the learned Judge of the trial court has considered the same in letter and spirit of the

provisions of Order XXII Rule 5 of C.P.C. and recorded the findings on the application Exh.107. In view of the above, I find no fault in the impugned order. There is no substance in the writ petition. Hence, the following order.

O R D E R

Writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

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