

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 7792 OF 2017

SARASWATI RAGHUNATH GOPALGHARE  
VERSUS  
RAMRAO BABU DARADE (DIED) THROUGH LRS AND OTHERS

Advocate for Petitioner : Mr. S.P. Salgar.  
Advocate for Respondent Nos. 1-A to 1-H : Mr. V.S. Badakh.

CORAM : RAVINDRA V. GHUGE, J.  
Dated : 26.02.2019

PER COURT :

1. The petitioner is aggrieved by the order dated 13.09.2016, passed by the appellate Court, by which, her application Exhibit 49 and 51 requesting to implead her as a defendant, in Regular Civil Appeal No. 99/2013, has been rejected.

2. I have considered the strenuous submissions of the learned advocate appearing on behalf of the petitioner/third party and respondent Nos. 1-A to 1-H. Learned advocates for respondent Nos. 2-A to 2-E and 3 to 6 are absent.

3. The petitioner/third party had contended before the appellate Court that RCS No. 173/1998, has been decided by judgment dated 26.02.2013. She was not arrayed as a defendant. Though the suit

was earlier remitted in Regular Civil Appeal No. 312/2004, setting aside the earlier judgment dated 16.08.2000, she was not arrayed as a defendant.

4. Further contention is that the father-in-law of the petitioner was the original plaintiff in the said suit. Her husband Raghunath was not party to the said proceedings. Since, the plaintiff Sopan passed away, his LRs in the form of his two sons and three sisters were taken on record. The father-in-law had transferred a parcel of land in the name of the petitioner, being his daughter-in-law and the mutation entry reveals that the name of the petitioner was entered in the revenue records on 03.03.2016. Her share of the land, as is evident from the revenue records, is a part of the suit property. Since, the plaintiff passed away and his LRs were brought on record, the petitioner desired to participate in the proceedings in order to safeguard her share of the suit property.

5. I find from the impugned order that the appellate Court has concluded that since a parcel of the suit land is transferred in her name, Section 52 of the Transfer of Property Act, while take care of such transfer which has occurred during the pendency of the suit. Her claim would exist through the deceased father-in-law Sopan. After the suit was remanded, the petitioner did not approach the trial

Court and therefore, the application is filed for delaying the matter.

6. Though the learned advocates appearing for the respondents have strenuously opposed this petition contending that the proceedings would take care of the share of the third party as her share may flow from the deceased Sopan, I find that the Hon'ble Apex Court has settled the law in Pankajbhai Rameshbhai Zalavadia Vs. Jethabhai Kalabhai Zalavadiya, [AIR 2018 SC 490] and in the matter of Vidur Impex and Traders Private Limited and others Vs. Tosh Apartments Private Limited and others, [(2012) 8 SCC 384], that an application for impleadment should be allowed under Order I Rule 10 if it appears that the presence of the third party would be necessary to adjudicate upon the proceedings if she had a share in the suit property.

7. I find that the Hon'ble Apex Court has also held in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others [(1992) 2 SCC 524], that if any claim in relation to a property is the subject matter of litigation and if a decision in the said matter is likely to affect the share of the third party, it would be appropriate to implead the third party as the main object of the rule is to prevent multiplicity of litigation.

8. I also notice from the record that the LRs of Sopan are his two sons and three daughters. There is some reservation expressed by the petitioner about her husband Raghunath, as regards his habits. She is apprehensive that her share of the suit property would be neglected in the litigation and she may not be able to safeguard the suit property, unless she is permitted to participate in the litigation.

9. In view of the above, this petition is allowed. The impugned order dated 13.09.2016, is quashed and set aside and the petitioner/third party is permitted to be arrayed as a defendant in RCA No. 99/2013. The appellant shall carry out this order within three weeks from today. In the event, the third party desires to enter her defence in the proceedings, she would be at liberty to request the appellate Court for such a permission.

10. The learned advocates appearing for the parties submit that as the appeal is lodged in the year 2013, they pray that the same may be expedited.

11. As such, the appellate Court would endeavour to decide RCA No. 99/2013, as expeditiously as possible and in any case on/or before 31.12.2019. The amount of Rs. 5,000/- deposited in the trial Court by the petitioner under the order of this Court dated

21.06.2017, shall be withdrawn by respondent Nos. 1-A to 1-H in equal proportions.

( RAVINDRA V. GHUGE, J. )

S.P.C.