

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2978 OF 2014

Shri.Ananda Shivaji @ Balu Ganjave and Others. Petitioners.

V/s.

Banda Dnyandeo Kodale and Others. Respondents.

Mr.Pradeep D.Dalvi, Learned Counsel for the Petitioners.
Mr.Kedar P.Lad, Learned Counsel for Respondent No.3(i) to 3(iii).

CORAM : M. S. SONAK, J.

DATED : 30th APRIL, 2019.

P.C. :

1. At the request of Mr.Pradeep Dalvi, Learned Counsel for the petitioners, leave is granted to delete respondent No.2 who is reported to have since expired. Necessary amendment to be carried out forthwith.

2. On 29/03/2019, this Court made a following order;

1. Since service is yet to be completed. S.O. to 29th April, 2019. The petitioners are directed to once again serve all the respondents, if necessary by private service and thereafter, to file an affidavit of service.

2. The notice now to indicate that this petition will be disposed of finally at the stage of admission. The interim order is extended till the next date.

3. However, it is now made extremely clear that in case no steps are taken and affidavit of service is filed, then

the interim order shall stand vacated without further reference to this Court.

3. Today, Mr.Dalvi, the Learned Counsel for the petitioners points out that respondent No.2, who was the father of petitioners, has since expired. He submits that respondent No.1 had instituted suit against respondent No.2 (now deceased) seeking specific performance. In this suit, the petitioners, had taken up an application at Exh.128 seeking for impleadment. It is this application, which came to be dismissed by the impugned order dated 26/07/2013.

4. According to me, there is no necessity to set aside the impugned order, in view of the subsequent developments. However, it is necessary to clarify that the impugned order need not influence the Learned Trial Judge while deciding the issue of bringing on record the legal representatives of deceased respondent No.2.

5. Now that respondent No.2, who is the original defendant in the suit, has expired, respondent No.1-plaintiff will have to take out an application to bring on record the legal representatives of deceased respondent No.2. Some of the legal representatives who are petitioners are the children of respondent No.2. Mr.Dalvi expressed his apprehension that at the time of consideration of such application, if and when taken out, the impugned order may come in the way.

6. Therefore, by clarifying that the impugned order will not come in the way and that such application will have to be decided on its own merits and in accordance with law. This petition is disposed of.

7. The petitioners, however, are directed to furnish a copy of this order to respondent No.1 and thereafter, file an affidavit of compliance before the Trial Court. The Trial Court, is also directed to ensure that the copy of this order is made available to respondent No.1 i.e. original plaintiff in the suit.

8. The petition is disposed of in the aforesaid terms.

9. Interim order granted earlier, is hereby vacated and the parties are directed to appear before the Trial Court on 06/06/2019 at 11.00 a.m.

10. All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)