

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6236 OF 2016

Khashaba Manku Thorat
(deceased) through L. Rs.

1a. Sushila Khashaba Thorat and Ors. ... Petitioners

Vs.

Krishna Manku Thorat and Ors. ... Respondents

.....

Mr. D.D. Rananaware for the Petitioners.

Mr. Nikhil Wadikar I/b. Mr. Nandu V. Pawar for Respondent No.1.

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CORAM : M. S. KARNIK, J.

DATE : 27th AUGUST, 2019.

P. C.:

1. Heard learned counsel for the petitioners.
2. By this petition filed under Articles 226 & 227 the petitioners are challenging the order dated 29.4.2016 passed below Exhibit 79 in Regular Civil Suit No. 208 of 2012.
3. It is the contention of the learned counsel for the petitioners that the Trial Court was not justified in allowing the application made by the plaintiffs for amendment of the plaint as during the pendency of the suit the defendant No.1 died on 9.4.2015. The plaintiffs without bringing the legal heirs of

defendant No.1 on record has filed the application for amendment. He would submit that though the application for setting aside the abatement was pending and also during the pendency of the application for bringing the legal heirs of defendant No. 1 on record, the Trial Court proceeded to allow the application for amendment. He would submit that therefore even without hearing the legal heirs of defendant No.1 and giving an opportunity to the petitioners to contest the application for amendment, the Trial Judge has allowed the application for amendment. This according to him is a procedural infirmity.

4. I have gone through the impugned order. By way of the amendment what is sought to be brought on record that pursuant to the death of defendant No.1, the legal heirs by the sale deed dated 11.3.2016 sold out a portion of the suit property in favour of Mr. Dattatray Janardhan Chavan which according to plaintiffs is illegal. The Trial Court has allowed the application for amendment. The issues are yet to be framed in the suit. The application for bringing the legal heirs and setting aside the abatement of the suit as against defendant No.1 is pending. If in view of the subsequent event in respect of the suit property having

been sold out by the legal heirs of defendant No.1 by sale deed dated 11.3.2016, the Trial Court has allowed the application for amendment to bring these facts on record, I do not see any reason to interfere with the impugned order. Learned counsel submitted that as the application for amendment is allowed without giving the chance to the petitioners to contest the application for setting aside the abatement causes serious prejudice to the petitioners rights. What has been done by the Trial Court is only to have allowed the application for amendment. If the suit has abated against defendant No.1, the consequences of the abatement would necessary follow.

5. The application for bringing the legal heirs is pending and the petitioners can always approach the Trial Court to contest the pending application. The petitioners are also at a liberty to file written statement to the amendments after they are brought on record as the legal heirs of defendant No. 1.

6. With these observations the Writ Petition is rejected.

(M. S. KARNIK, J.)