

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

WRIT PETITION NO.11699 OF 2018

Dimakhrao Tukaram Patil and Ors. ... Petitioners

Vs.

Surekha Gajanan Patil ... Respondent

.....

Mr. Kuldeep U. Nikam for the Petitioners.

Mr. Ashutosh M. Kulkarni a/w Ms. Akansha Helaskar for the Respondent.

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CORAM : M. S. KARNIK, J.

DATE : 13th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioners.
2. The petitioners claim to be the legal heirs of plaintiff Dimakhrao Tukaram Patil. Dimakhrao Patil filed a suit for declaration and injunction restraining the defendant from interfering with the peaceful possession of the plaintiff over the suit property. In the plaint in Para 2 the plaintiff-Dimakhrao had mentioned the genealogy. In the genealogy it was stated that Hausabai and Vitthal are the wife and son of Dimakhrao. Hausabai and Vitthal had already died on the date of filing of the suit. During the pendency of the suit Dimakhrao died on

13.1.2018. The petitioners claim to be the legal heirs of Dimakhrao. According to the petitioners, the petitioner No.1-Draupadi Dimakhrao Patil is the first wife of Dimakhrao and petitioner No.2-Chaya Namdev Patil claims to be a daughter in law of Dimakhrao and Draupadi. The petitioners had filed application before the Trial Court for bringing them as legal heirs of Dimakhrao. The said application was allowed by the Trial Court vide order dated 22.2.2018. The petitioners are already brought on record as legal heirs of Dimakhrao.

3. The petitioners thereafter filed application below Exhibit 36 for carrying out amendment in the plaint in the genealogy for the purpose of demonstrating that the petitioners are also the legal heirs of Dimakhrao. The petitioner No.1 being first wife, petitioner No.2 being the daughter in law and petitioner No.3 Vishwajit Namdev Patil who is grandson. The said application below Exhibit 36 came to be rejected by the Trial Court by the impugned order. According to the Trial Judge, the details about the exact relation between the parties should have been stated by the petitioners.

4. Learned counsel for the petitioners submits that the petitioners are already on record as legal heirs of the petitioner-original plaintiff and therefore the application for amendment could not have been rejected on the ground that details of relationship is not stated.

5. Learned counsel for the respondent-defendant pointed out that the order passed by the Trial Court allowing the application for bringing the said petitioners on record as the legal heirs of the plaintiff was made without hearing of defendant. She submitted that defendant has already filed an application for reviewing the order dated 22.2.2018 passed by the Trial Court.

6. Suffice it to observe that as the petitioners are already on record, there is no difficulty in allowing the application for amendment, as the issues are yet to be framed. The amendment is to the extent of amending the genealogy. All objections to the genealogy can always be raised by the respondent at the appropriate stage.

7. Needless to mention that the Review Petition filed by the defendant will have to be decided on its own merits by the

Trial Court and an appropriate order can always be passed. It is made clear that the Review Petition will be decided on its own merits without being influenced by the orders passed by me in this petition. In the event the Review is allowed, the consequences will obviously follow. All contentions in review are kept open.

8. The present petition is allowed. The impugned order is set aside. The amendment to be carried out within two weeks from today.

(M. S. KARNIK, J.)