

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2433 OF 2013

Kanchan Bhaskar Sawant
@ Kanchan Raghunath TawadePetitioner
V/s.
Smt. Chitra Chintaman Patil
and Ors.Respondents

APPEARANCES :

Mr. B.G. Tangsali, Advocate for the petitioner.

Mr. Kaushal A. Tamhane i/by. M/s. Dhanuka & Partners,
Advocate for respondent no.1.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 25th June, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. The petitioner's father filed a Special Civil Suit

No. 237 of 2001 in the Court of Civil Judge Senior Division, Thane. The suit was decreed on 29th October, 2009 whereby defendants no.1 and 2 were directed to hand over vacant and peaceful physical possession of the suit premises, being Flat No.203 to the plaintiff. Pending suit, father of the petitioner, Raghunath Babaji Tawade passed away. On 11th February, 2004, an application was filed by the petitioner contending that, she is the only legal heir and representative of Raghunath Babaji Tawade and therefore as the right to sue survives, she may be substituted and permitted to prosecute the suit. Accordingly, the petitioner prosecuted the suit as the legal representative of Raghunath Babaji Tawade.

3. Against the decree of possession, original defendant no.2 preferred Regular Civil Appeal No. 122 of 2009. Pending Appeal, the respondent no.1 herein

applied to the Appellate Court to implead herself as a party respondent being a necessary party. It is not in dispute that, the respondent no.1 is the sister of the petitioner and it appears that this fact was not disclosed by the petitioner to the trial Court, in application dated 11th February, 2004. In fact, in the said application, the petitioner would assert that, she is the only legal heir and representative of Raghunath Babaji Tawade (plaintiff). In view of this fact, the learned Judge allowed the application vide order dated 21st June, 2012. It is against this order, this writ petition is preferred.

4. Taking into consideration the facts of the case, that the name of respondent no.1 was not disclosed by the petitioner, when she applied to substitute herself and prosecute the suit after her father's death, I do not see any reason to interfere with the order impugned in the

application. Obviously, the respondent no.1 herein being the daughter of the original plaintiff and sister of the petitioner has right to represent the interest of her father in the suit property, the order passed by the learned Judge deserves no interference. Accordingly, the petition is dismissed.

5. The interim relief, if any granted, is vacated.

(SANDEEP K. SHINDE, J)