

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

**CIVIL APPLICATION NO. 1077 OF 2019
IN
WRIT PETITION NO. 13692 OF 2018**

Sulochana Madhavlal Pittie & ...Applicants/Petitioners
Ors.

Versus

Bharat Kishore Gupta .. Respondent

Ms. Ankita Singhania a/w. Saif Dingankar for Applicants.
None for the Respondent.

**CORAM : DAMA SESHADRI NAIDU,
J.
DATE : 18th NOVEMBER, 2019**

P.C.:

On 5th December 2018, this Court disposed of Writ Petition No.13692 of 2018. Later, the petitioners have filed a Civil Review Application; they wanted the order corrected. The order was passed by Hon'ble Mr. Justice M. S. Sonak, then holding the Court here at the Principal Bench. So I was

initially hesitant to put my own interpretative spin on the order. Therefore, I required the Registry to place the matter before the same Hon'ble judge.

2. Later, as Shri Sonak J has gone over to the Goa Bench, the Registry has, it seems, placed the matter once again before me, for I presently hold the jurisdiction over the subject of the writ petition.

3. On one occasion, the respondent's counsel was present. When the petitioners' counsel tried to impress upon the Court that the application was for correction of factual errors in the order, the respondent's counsel, however, objected to it. Then, she wanted to file a reply. So I adjourn the matter.

4. But despite the adjournment, during the next date of hearing, none represented the respondent. Then, I had the matter listed today. Today, too, none appears for the respondent. I had the matter kept back until afternoon, hoping that the respondent might find it convenient to

appear. When I took up the matter at about 3.15 p.m., none represented the respondent. Under these circumstances, I have decided to dispose of the Civil Application.

5. The Petitioners' counsel has drawn my attention to this Court's earlier order in Suit No.224 of 1961 involving the same parties. As contended by the petitioners' counsel, what the applicant now seeks is, I reckon, correction of a fact or two.

6. In the 2nd paragraph of the order, the petitioners want the judicial proceedings described correctly. According to them, the title of the suit was wrongly mentioned as R.A.E. Suit No.18 of 2015, instead of R.E.S. Application No.18 of 2015. So "R.A.E. Suit" must be corrected as "R.E.S. Application".

7. In the same paragraph, the petitioners want, in 5th and 6th lines, the words "in so far as estate left behind by" replaced with "as". For this, they maintain that the property was not solely owned by Madhavlal Narayanlal Pittie alone in

his personal capacity. And this assertion is based on the record.

8. And another correction in the 2nd paragraph in the 6th line is this: the expression “is concerned’ be replaced with “ was appointed as Court Receiver and upon his demise.” For this Court appointed Madhavalal Pittie as Receiver.

9. The last correction in the 2nd paragraph belongs to 7th and 8th lines. The petitioners want the words, “remaining legal representative” replaced with the words “the parties to Suit No.224 of 1961”. It is in the context of Madhavalal Pittie’s death.

10. Finally, in paragraph 5, the order refers to “the appointment of Mr. Vivek as Court Receiver is possible in the context of inter se dispute between the legal representatives to Bharat Gupta”. The petitioners want the last five words in that sentence read as “the appointment of Mr. Vivek as Court Receiver is possible in the context of the *inter se* dispute

between the Pittie family”. Consequently, they also want the Court to substitute the words “legal representative” in the 2nd and the 3rd lines with “Pittie family”.

11. The petitioners’ counsel has explained how these changes are mere factual correction. She has demonstrated before the Court that the record amply supports these corrections. Even otherwise, I hold these corrections are factual and matters of record, not causing any prejudice to the respondents.

12. As a result, paragraph No.2 and 5 stand replaced and read as follows:

“2. The challenge in this Petition is to the order dated 17th October 2018, by which the learned trial Court has permitted the proposed legal representatives of late Madhavlal Pittie to be brought on record in R.E.S. Application No.18 of 2015 instituted by the Respondent Bharat Gupta. Ms. Singhania submits that as Madhavlal Pittie was appointed as Court Receiver and upon his demise his son has been appointed as Court Receiver with consent of the parties to suit No.224 of 1961. She further submits that there is absolutely no necessity to bring on record any

legal representatives other than said Vivek. She points out that in a Suit instituted by late Madhavlal Pittie against Bharat Gupta, learned trial Court has accepted this position and permitted Mr. Vivek, in his capacity as Court Receiver to pursue the Suit for eviction. Ms. Singhania points out that the Petitioner Nos. 4 and 5 who have been ordered to be brought on record by the impugned order are not even the legal representatives of late Madhavlal Pittie. For basically these reasons Ms. Singhania submits that the impugned order warrants interference.

5. The appointment of Mr. Vivek as Court Receiver is possible in the context of interse dispute between the Pittie family. Ms. Singhania however submits that there are presently no disputes. Be that as it may, the applicant in R.E.S. Application No.18 of 2015 cannot be prevented from bringing on record of the legal representatives, merely, because Mr. Vivek may have been appointed as the Court receiver in the suit for eviction instituted by late Madhavlal Pittie. Therefore, merely because an order is made in the said suit permitting Mr. Vivek to pursue the same, by the same logic Petitioners cannot insist that all of them cannot be or need not be brought on record in the proceeding instituted by Bharat Gupta.”

13. The original order, dated 5th December 2018, stands corrected accordingly.

I, accordingly, dispose of the Civil Application No.1077 of 2019.

(DAMA SESHADRI NAIDU, J.)