

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

WRIT PETITION NO. 2999 OF 2017

Smt. Pratima Harischandra @ Hari Kharat	...	Petitioner
V/s.		
Thakubai Sitaram Jagtap (decd) through Lrs. Maya P. Kakade and ors	...	Respondents

Mr. Sujay Gawade i/by Shree & Co., for Petitioner.
Mr. T.D. Deshmukh, for Respondent No.1 and 5.

CORAM : SANDEEP K. SHINDE, J.

DATE : 16st August, 2019.

P.C. :

- 1] Heard learned counsel for the parties.
- 2] The petitioner-plaintiff instituted Regular Civil Suit No.308 of 2003, seeking declaratory decree. Pending suit, interim relief was sought, however, was pending consideration.
- 3] On 14th August, 2015, the sole defendant died, but for want of death certificate the legal representatives of the deceased defendant could not be brought on record within the permissible period.

Resultantly, the trial Court ordered abatement of the suit.

4] It is under these circumstances, an application for setting aside the order of abatement at Exh.38 and application for condonation of delay at Exh.42 were filed. The trial Court, by separate orders dated 7th July, 2016 dismissed both the applications. Thus, aggrieved by the impugned orders dated 7th July, 2016 passed below Exh.38 and 42, initially, Civil Revision Application was filed, but later, vide order dated 6th March, 2017, permitted the applicant to convert Civil Revision Application, into Writ Petition.

5] Pending Writ Petition, Civil Application No.2865 of 2017, was filed before this Court by the petitioner, apprehending dispossession from the suit land at the hands of the defendants. As such, this Court, vide order dated 10th January, 2019 restrained defendant (the legal representatives of the deceased respondent Thakubai Sitaram Jagtap) from disturbing the possession of the plaintiff in the suit land.

6] Mr. Deshmukh, learned counsel for the respondent submits that this Court could not have passed injunction order in as much as since the date of institution of the suit i.e. 2013, the trial Court had not granted relief though application was filed for the same. Mr. Deshmukh

further submits that even otherwise unless the suit is revived and order of abatement is set aside, this Court could not have passed restrain order against the respondents, as on the given date suit was not alive, being abated.

7] Though I find substance in the submission of Mr. Deshmukh, the fact remains that the order dated 10th January, 2019 shows the presence of Mr. Deshmukh. Perused the impugned order. The trial Court, should not have rejected the application to bring the legal representatives of deceased defendant on record, for want of death certificate as it is not the requirement of provisions of Order XXII of the Code of Civil Procedure, 1908.

8] In the result, the impugned orders are quashed and set aside. The application filed by the plaintiff for bringing the legal representatives of deceased defendant on record is allowed and the delay caused is condoned.

9] Petitioner-plaintiff shall carry out the consequential amendment within four weeks from the date of uploading this order on the website.

10] So far as the order dated 10th January, 2019, passed in Civil Application No.2865 of 2017, is concerned, it shall remain in force for a

period of 7 weeks from the date of uploading this order on the website. The petitioner plaintiff may pursue his application at Exh.5 and seek appropriate relief. However, the trial Court shall decide the said application on its own merits without being influenced by order dated 10th January, 2019 passed by this Court, in Civil Application No.2865 of 2017.

11] The Writ petition is allowed and disposed of .

[SANDEEP K. SHINDE, J.]