

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11144 OF 2017
WITH
CIVIL APPLICATION NO.2149 OF 2018

Pravin Thanamal Shaha and Ors. ...Petitioners
vs.
Dhonduraj @ Dhonduraj Pandurang More and Ors. ...Respondents

Mr. R.S. Datar, for the Petitioners
Mr. R.D. Joshi, for Respondent Nos. 1 to 7

CORAM : M. S. SONAK, J.

DATE : APRIL 10, 2019

P.C.:

. Heard Mr. Datar, learned counsel for the Petitioners and Mr. Joshi, learned counsel for the Respondents.

2. The challenge in this Petition is to the order dated 1st July, 2017 passed below Exhibit 114. The operative portion of which read thus:

*“1. The application is allowed.
2. The Assistant Superintendent of this Court is appointed to represent the suit property of Defendant No. 1 for the purpose of the present suit.”*

3. In this case, the record makes it clear that Defendant No. 1 to the suit died without leaving behind any legal representative. Therefore, the original Plaintiff took out an application in terms of

Order XXII Rule 4A of Code of Civil Procedure (CPC). The impugned order has been made disposing of the said application.

4. Mr. Datar, learned counsel for the Petitioners submit that the learned trial Judge has failed to follow the provisions in Order XXII Rule 4-A(2)(a) of CPC in as much as notice of this application was not given to any parties. In the alternate, he submits that since the Petitioners have purchased the property from Defendant No. 1 and since Defendant No. 1 had supported this position by filing a written statement as also the counter claim, the learned trial Judge should have considered pointing one of the Petitioner to represent the estate of Defendant No. 1. He points out that that it is the Petitioners who are in possession of the suit property in pursuance of sale by deceased – Defendant No. 1. For all these reasons, he submits that the impugned order may be set aside.

5. Mr. Joshi, the learned counsel for the Respondents defends the impugned order on the basis of reasoning reflected therein.

6. In this case, it cannot be said that there is no jurisdictional error in the view taken by the learned trial Judge.

7. The provision of the Order XXII Rule 4-A has conferred discretion in the learned trial Judge. In a given case, the suit can proceed in the absence of any person representing the estate of the

deceased person. The learned trial Judge in its discretion has appointed the Assistant Superintendent of the Court to represent the estate of the Defendant No. 1 on the aspect of notice, the learned trial Judge has observed that all parties who may interested in the estate of the deceased already had a notice of such application. This procedural compliance and here again the discretion is vested to the learned trial Judge which is pertinent from the expression "*as it thinks fit*". The request for appointment of the Petitioners to represent the estate of Defendant No. 1 was perhaps not considered because in the suit there is challenge by the Deed of Defendant No. 1 as stated to have sold the property to the Petitioners. Again it cannot be said that discretion can not be exercised in an unreasonable manner or contrary to the law.

8. For the aforesaid reasons, there is no case made out to interfere in the impugned order.

9. This Petition is therefore dismissed.

10. There shall be no order as to costs.

11. The interim order granted earlier is hereby vacated.

12. Civil Application does not survive and the same is also disposed of.

(M. S. SONAK, J.)