

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

16 CIVIL APPLICATION NO.5050 OF 2021
IN SA/15/2020
WITH CA/426/2020 IN SA/15/2020

PREMSUKH MANSUKH SANCHETI AND OTHERS

VERSUS

RAJENDRA BALRAJ POPULEWAL AND OTHERS

...

Mr. P.F. Patni, Advocate for applicants

Mr. K.A. Ingale, Advocate for the respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26th JULY, 2021.

ORDER :

1 Present application has been filed by the legal representatives of the original respondent No.4 in the Second Appeal to bring themselves on record. In fact, present respondent No.2 is the original appellant in the Second Appeal. He has not filed any application for bringing the legal representatives of respondent No.4 but the legal representatives themselves have come.

2 Heard learned Advocate Mr. P.F. Patni for applicants and learned

Advocate Mr. K.A. Ingale for the respondent No.2.

3 It has been vehemently submitted on behalf of the applicants that the proposed legal representatives of the respondent No.4 are the son and widow left by respondent No.4. Respondent No.4 Madanlal Ratanlal Varma expired on 23.03.2021. It is stated that the suit is in respect of possession of the immovable property based on title, and therefore, the cause of action survives against them. They are necessary parties to the proceeding and therefore, they be allowed to be brought on record. Learned Advocate for the applicants relied on the Adoption Deed, which is a registered document executed on 12.07.2002. Thereafter, the adopted son, by Notification in the official Gazette changed his name, and therefore, after the demise of respondent No.4 the widow and the son had filed Civil Miscellaneous Application No.653/2021 before Civil Judge Senior Division, Aurangabad, for grant of legal heirship certificate and succession certificate. That application came to be allowed on 24.05.2021 by the learned Joint Civil Judge Senior Division, Aurangabad, and therefore, those applicants are the legal representatives of respondent No.4. They should be brought on record.

4 Per contra, the respondent No.2 has filed affidavit-in-reply and objected the application stating that Madanlal Ratanlal Varma died issue-less. He is taking objection in respect of inclusion of the alleged son as legal

representative. In fact, that son is the son of one Badrinarayan Varma and not Madanlal Varma. Learned Advocate appearing for the respondent No.2-original appellant vehemently submitted that the alleged adoption is illegal and against the principles of Section 10 of the Hindu Adoption and Maintenance Act, 1956. Section 10 of the said Act specifically puts a condition that a person to be adopted should not be a married person, so also, he should not have completed the age of his 15 years. But then it can be seen that at the time of alleged adoption present applicant No.4-A is stated to be aged 22 years and he was married at that time. He could not have been taken in adoption. Therefore, that adoption is illegal. Further, in view of Order XXII Rule 5 of the Code of Civil Procedure, 1908, the question, about determination as to legal representative, will have to be referred to the subordinate Court, in view of the proviso. He, therefore, prayed for referring the question accordingly before admitting the applicant No.4-A as legal representative of deceased respondent No.4.

5 At the outset, it can be seen that as per Order XXII Rule 5 of the Code of Civil Procedure, 1908, “where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court”. The proviso says that - “Where such question arises before an Appellate Court,

that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded as such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question". It is required to be seen, as to whether there is any necessity to adopt such provision in this case. Now, as regards the point raised about adoption being illegal, in view of Section 10 of the Hindu Adoption and Maintenance Act is concerned, it would be for the respondent to raise it before appropriate Court. This is in view of the fact that already the present applicant Nos.4-A and 4-B had approached Civil Court by filing Civil Miscellaneous Application No.653/2021, for grant of legal heirship certificate and succession certificate and they have received it by way of order dated 24.05.2021. They have been declared as heirs of deceased Madanlal. It is to be noted from the documents those have been produced on record that notice was issued to the respondent/State of Maharashtra and also citation was issued in the paper inviting objections. When no objections were received it appears that the concerned Court had proceeded to take up the further proceedings in the matter and then ultimately allowed that application. The said Judgment and order would be *Judgment in rem* as it relates to succession. Further in view of Section 41 of the Indian Evidence Act, 1872, the final Judgment of a competent Court, exercising the powers of probate,

matrimonial, admiralty or insolvency proceedings, which confers upon or takes away from any person any legal character, would be relevant, and therefore, when a competent Court has come to the conclusion and given the certificate holding applicant No.4-A as son of deceased Madanlal, then this Court cannot go beyond that. There is absolutely no necessity to take up the procedure as contemplated under Order XXII Rule 5 of the Code of Civil Procedure, 1908. The application, therefore, deserves to be allowed. Hence, following order.

ORDER

- 1 The application stands allowed in terms of prayer clause “B”.
- 2 The applicant Nos.4-A and 4-B be brought on record in the Second Appeal as legal representatives of deceased respondent No.4.
- 3 The necessary amendment be carried out by the appellant, within a period of two weeks from today.
- 4 Interim relief to continue.

(Smt. Vibha Kankanwadi, J.)