

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

WRIT PETITION NO. 9340 OF 2017

Sumanbai Hiraman Nikam	... Petitioner
Vs.	
Jaibai Dinkar Pagare & Ors.	... Respondents

.....

Mr. Milind Sathaye for the Petitioner.

Mr. Sanjay Prabhakar Shinde for the Respondent Nos. 1 to 3.

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CORAM: MADHAV J. JAMDAR, J.

DATE : 4th AUGUST, 2021.

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1. Heard Mr. Milind Sathaye learned Advocate for the Petitioner and Mr. Sanjay Shinde, learned Advocate for the Respondent Nos. 1 to 3.

2. By the present Writ Petition, order dated 26th July, 2016 passed by the learned Civil Judge, Junior Division, Dindori below Exhibit-68 in Regular Civil Suit No. 73 of 2007 is challenged.

3. Mr. Sathaye pointed out that application at Exhibit-68 was filed in R.C.S. No. 73 of 2007 for condonation of delay in filing application for bringing on record heirs and legal representatives of deceased Defendant No.4-Gangubai Mogal Khairnar, Exhibit-78 for bringing on record heirs and legal representatives of deceased Defendant No.4 and Exhibit-83 seeking that inquiry be conducted regarding the factum of death of Defendant No.4 as well as regarding heirs and legal representatives of Defendant No.4. Mr.

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Sathaye, learned counsel appearing for Petitioner submits that as a result of impugned order rejecting Exhibit-68 application, consequently applications at Exhibit-78 and 83 are also rejected.

4. Mr. Sathaye, learned counsel appearing for the Petitioner submitted that the only reason given by the learned Trial Court is that the name of Defendant No.4 differs on the Death Certificate. He submitted that in fact the legal heirs and representatives of the Defendant No.4 have filed vakalatnama in the Trial Court at Exhibit-73 and therefore, there is no doubt about the factum of the death of Defendant No.4 as well as the names of the legal heirs. He submitted that the said legal heirs have not raised any objection before the learned Trial Court.

5. Mr. Shinde, learned Advocate appearing on behalf of the Respondent Nos. 1 to 3 submitted that there is delay in filing the said application and as far as the aspect regarding anomaly between name of the Defendant No.4 on the death certificate, Respondent Nos. 1 to 3 have no information and therefore, appropriate order be passed.

6. A perusal of the plaint shows that the name of Defendant No.4 is "Smt. Gangubai Mogal Khairnar". The name of the Defendant No.4 on the death certificate produced at Exhibit-82 as recorded in the impugned order is "Smt. Gangubai Khare". However, perusal of the Exhibit-73 i.e. vakalatnama filed by the heirs and legal representatives of original Defendant No.4 shows that following are the heirs and legal representatives :-

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1. Hirabai Tulshiram Gaikwad -Daughter
2. Sushila Dilip Pagare- Daughter
3. Ranjana Manohar Khairnar (Khare)- Daughter-in-law
4. Samadhan Manohar Khairnar (Khare)
5. Sagar (Ravindra) Manohar Khairnar (Khare)

The names appearing on the vakalatnama clearly shows that the said family has two surnames namely "Khairnar" and "Khare". Therefore, the death certificate produced at Exhibit-82 in the Trial Court showing the name of deceased as "Smt. Gangubai Khare" is of Defendant No.4 i.e. "Smt. Gangubai Mogal Khairnar".

7. It is also important to note that the heirs and legal representatives of deceased Defendant No.4 appeared before the learned Trial Court and have not raised any objection regarding both the aspects namely that they are legal heirs and representatives of original Defendant No.4 i.e. Smt. Gangubai Mogal Khairnar and that death certificate produced at Exhibit-82 is of Smt. Gangubai Khare i.e. Smt. Gangubai Mogal Khairnar. Therefore, impugned order dated 26th July, 2016 passed below Exhibit-68 in R.C.S. No. 73 of 2007 by the learned Civil Judge, Junior Division, Dindori is quashed and set aside.

8. Applications bearing Exhibit-68 and 78 in R.C.S. No. 73 of 2007 filed for delay condonation and for bringing on record names of heirs and legal representatives are allowed. In view of this order application at Exhibit-83 in R.C.S. No. 73 of 2007 doesn't survive and disposed of as such.

9. Plaint in R.C.S. No. 73 of 2007 be amended within a period of four weeks from today.
10. Writ Petition is disposed of in above terms.

(MADHAV J. JAMDAR, J.)