

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2701 OF 2020

- 1] Bhikanrao Balaji Wayal (Deshmukh),
Aged 69 years, Occu : Agriculture,
R/o. Chinchkhed, Tah. Deulgaonraja,
Dist. Buldana.
- 2] Narmada Himmatrao More (Deshmukh),
Aged 77 years, Occu: Agriculture,
R/o. Sawangivir, Tah. Mehkar,
Dist. Buldana.
- 3] Bebi Balaji Wayal (Deshmukh),
Aged 60 years, Occu : Agriculture,
at and Post-Manubai,
Tah. Deulgaonraja, Dist. Buldana. .. Petitioners
(Original Claimants)

... Versus ..

- 1] The State of Maharashtra,
through the Collector,
Buldana, Dist. Buldana.
- 2] Special Land Acquisition Officer,
Khadakpurna Project,
Sindhkhed Raja, Tah. Sindhkhed Raja,
Dist. Buldana.
- 3] Executive Engineer,
Khadakpurna Project,
Sindhkhed Raja,
Tah. Sindhkhed Raja,
Dist. Buldana. .. Respondents
(Original opponents)

Shri K.S. Narwade, Advocate for the petitioners,
Shri S.M. Ukey, Additional Government Pleader for the
respondents-State.

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CORAM : N.B. SURYAWANSHI, J.
DATED : 03.08.2021.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of the parties.

2. This petition filed under Articles 226 and 227 of the
Constitution of India takes exception to the order dated
21.7.2020 passed by the learned Joint Civil Judge, Senior
Division, Buldhana in Civil M.A. No.73/2019 thereby rejecting
the application filed by the petitioners for correction of the
name of mother of the applicants in the original petition,
judgment and award of L.A.C. No.102/2007.

3. The petitioners are the legal heirs of deceased Balaji
Wyal and Parwati Balaji Wyal. The land standing in the
name of deceased Balaji Wyal bearing Survey No.60, ad-
measuring 32 R situated at village Chinchkhed, Tah.

Deulgaonraja, District-Buldana was acquired for the Khadakpurna Project. An award was published in the year 2005. Before initiation of acquisition proceeding, Balaji Wayal and Parwati Wayal had expired. Parwati, the mother of the petitioners, expired on 12.8.1997. The names of the petitioners and Parwati Wayal continued in the revenue record as heirs of Balaji Wayal and as owners of the agricultural land. Therefore, an Award passed in the year 2005 contained Parwati's name. The petitioner no.1 was permitted to withdraw the amount of compensation. The petitioners thereafter filed reference under Section 18 of the Land Acquisition Act bearing LAC No.102/2007. In the cause title of the reference, Parwati (mother) is shown as claimant no.2 along with the petitioners. The reference was allowed on 5.12.2017 by enhancing the compensation awarded to the petitioners.

4. The petitioners thereafter filed execution proceeding bearing Special Darkhast No.02/2019 wherein at Sr. No.2 Parwati's name is mentioned as deceased through the legal heirs petitioner nos.1 to 3. During the pendency of the execution proceeding, the petitioners filed Civil M.A. No.73/2009 under

Sections 151 and 153 of the Code of Civil Procedure, seeking correction in the reference and award by deleting the name of Parwati Balaji Wayal as claimant and showing the petitioners as her legal heirs. In support of the said application, petitioner no.1 examined himself and was cross-examined by the respondents. The Executing Court rejected the said application. The rejection order is impugned in the present petition.

5. Heard the learned Advocate for the petitioners and the learned Additional Government Pleader for the respondents-State.

6. The learned Advocate for the petitioners submitted that the petitioners are illiterate and that they committed the mistake of not deleting the name of the deceased mother and continuing it in the proceedings. He submits that there is no dispute that the petitioners are the only legal heirs of deceased Parwati. The petitioners have not derived any benefit by filing the proceedings containing the name of deceased Parwati. He submitted that in view of Sections 151 and 153 of the Code of Civil Procedure, the Trial Court ought to have allowed their

application and deleted the name of Parwati Balaji Wayal from the reference as well as from the judgment and award. In support of his submissions, he relied upon the decision in **Hansabai Shripati Bhosale .vs. Parubai Gopal Bhosale, 2009 (5) Mh.L.J. 500.**

7. Per contra, the learned Additional Government Pleader for the respondents-State, submitted that though the petitioners knew that their mother was dead, even prior to the passing of the award and at the time of filing of the reference as well as passing of the judgment and award in the reference, they have deliberately not brought that fact to the notice of the reference court. The application filed by the petitioners was not bonafide and the Trial Court has rightly rejected the said application. He further pointed out that the Trial Court has observed in the impugned order that thumb impression of deceased Parwati was put in the proceeding filed by the petitioners, therefore, submits that the Trial Court was justified in rejecting the application and there is no merit in the writ petition and the same may be dismissed.

8. There cannot be any dispute that the petitioners are the only legal heirs of deceased Parwati Wayal. The petitioners claimed that they are illiterate. The petitioner no.1 can only sign and petitioner nos.2 and 3 have put their thumb impressions in the proceedings. It has come in the cross-examination of the petitioner no.1 that he is illiterate and he can only sign. It has further come in his evidence that after the death of Parwati, the necessary changes were not effected in the revenue record. It is therefore clear that unintentionally and on account of their illiteracy, the petitioners have continued the name of deceased Parwati Wayal in the proceedings. The petitioners have not gained any undue advantage by continuing the name of deceased Parwati in the proceedings. It appears that due to illiteracy, the petitioners could not give proper instructions to their Advocate and the name of their mother Parwati continued in the proceedings.

9. In **Hansabai Shripati Bhosale** (supra), this Court, by taking into consideration Sections 151, 152 and 153 of the Code of Civil Procedure, has observed thus :

14. As already stated, section 153 refers to the phraseology "any proceeding in a suit". Now, the

question is what do you mean by “any proceeding in a suit”?. The word “any” means all except such a wide construction is limited by the subject-matter and the context of the statute. “Any” is a word which excludes limitation or qualification. The expression “any” includes everything.

The word “proceeding” can be given a narrow or wide import depending upon the nature and the scope of an enactment in which it is used and in the particular context of the language of the enactment in which it appears. The word “proceeding” in section 13 of the Orissa House Rent Control Act, 1947 is given wide meaning to cover an execution proceeding by the Orissa High Court in the case of Raja Bahadur of Khallikote .vs. Lingaraj Padhi and another, AIR 1951 Orissa 15. The word “proceeding” is defined in a Shorter Oxford Dictionary as “doing a legal action or process, any act done by authority of a Court of Law”. The term “proceeding” is a very comprehensive term generally speaking means a prescribed course of action for enforcing a legal right and hence it necessarily embraces the requisite steps by which a judicial action is involved. It means any application to a Court of justice however, made for aid in the enforcement of rights, for reliefs, for redress of injuries, for damages, or any remedial objection. The Concise Oxford Dictionary gives meaning of the word “proceeding” as used in legal sense as “steps taken in legal action”.

18. *Keeping the aforesaid principles of interpretation and the importance of procedural law in mind, one has to give wide meaning to the phrase “in any proceeding” so as to advance the cause of justice. All proceedings in the Court of Civil jurisdiction would fall within the scope of this phrase so as to lean in favour of Court having power under sections 151, 152 and 153 in favour of the Civil Court to correct errors in the proceeding so as to amend judgment and decree in order to justice between the parties. In this view of the matter, the impugned order is liable to be sustained on the touchstone of sections 152 and 153 read with Section 151 of the Code.*

19-C) *Intention and Bona fides of the plaintiff -*

The learned Judge has to assess from such application and also from the proceedings whether the plaintiff had intentionally suppressed the fact or deliberately misled the defendant or the Court to snatch the orders. The mistake or error in the plaint should be necessarily bona fide and unintentional. Sheer negligence, oversight, illiteracy may be the reasons of such error or it may be silly mistake. However, it should be transparent and honest. These criteria are to be kept in mind to eliminate the possibility of substitution of the land and if the application made under section 153 of the Code passes all these tests then it is to be allowed to facilitate Ex-defito-justitia i.e. to meet real and substantial justice.”

10. In the light of above ratio and taking into consideration the facts of the present case, it appears that the mistake on the part of the petitioners to continue their mother's name was unintentional and it was on account of their illiteracy. The respondents are not likely to suffer any prejudice if the name of deceased Parwati is deleted from the proceedings by allowing the application filed by the petitioners. The application therefore deserves to be allowed in the interest of justice and in view of the peculiar facts of the present case.

11. The Trial Court erred in letting the name of a dead person to continue in the proceeding. The Trial Court has erred

in rejecting the application filed by the petitioners seeking amendment. The Trial Court has misread and misconstrued the provisions of Sections 151 and 153 of the Code of Civil Procedure and the impugned order is contrary to the ratio in **Hansabai Shripati Bhosale** (supra). The impugned order therefore is liable to be quashed and set aside. Hence, the following order :

O R D E R

- (1) Writ Petition is allowed.
- (2) The impugned order dated 21.7.2020 passed by the learned Joint Civil Judge, Senior Division, Buldhana in Civil M.A. No.73/2019 arising out of the execution proceeding is hereby quashed and set aside.
- (3) The application dated 2.4.2019 (Annexure-F) is allowed in terms of the prayers made therein, subject to the condition that the petitioners shall deposit costs of Rs.10,000/- with the District Legal Services Authority, Buldhana.

Rule made absolute in the above terms.

(N.B. Suryawanshi, J.)