

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 11416 OF 2021

Nanabhau Budha Kadhare, Since deceased
through his LR's and others

...Petitioners

Versus

Sau. Sajan @ Sadhana Manohar Jain & Ors.

...Respondents

.....

Mr. Anup D. Mane h/f Mr. Amol S. Sawant, Advocate for the
petitioners

Mr. Sanket S. Kulkarni, Advocate for respondent no. 1

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CORAM : BHARATI H. DANGRE, J.

DATE : FEBRUARY 04TH, 2022

PER COURT : -

1. The petitioners, the legal heirs of the original plaintiff Nanabhau Budha Kadhare who had filed Special Civil Suit for specific performance of an agreement, sought transposition of plaintiff no. 5 as defendant no. 3. The reason stated in the application is to the effect that when her presence was sought in the court for obtaining signatures/thumb impression and at the time of amending the plaint, she did not render her cooperation.

2. The original plaintiff – Nanabhau Budha Kadhare has expired and his wife and sons are already brought on record as legal

heirs. Originally the suit is filed for specific performance of an agreement and she being a legal heir is also impleaded in the said suit on death of Nana Kadhare. However, since it appears that she is not cooperating with the remaining plaintiffs for proceeding with the suit, her transposition is sought for as a proforma defendant. Since no relief is sought against her, the application (Exh.69) is rejected under the impugned order on 31.12.2019. On perusal of the impugned order and on hearing the learned Counsels of the respective parties, I do not think that any harm is going to cause to the interest of the plaintiffs or to the original defendants, if the plaintiff no. 5, the legal heir of Nana Kadhare, is transposed as defendant no. 3. Since no legal provision prohibit such a transposition, the learned Judge ought to have granted such application which would be in the convenience of the plaintiffs and for the learned Judge to proceed. Merely saying that she could have been represented by the other plaintiffs is not sufficient ground to reject the application.

3. Necessarily, by setting aside the impugned order, the writ petition is allowed. The application (Exh.69) filed by the petitioners seeking transposition of the plaintiff no. 5 as defendant no. 3 is granted. Necessarily, amendment shall be permitted to be carried out within one week from today.

4. Under the orders of this Court passed on 02.12.2021, the proceedings in the suit are stayed. The stay is vacated and instead the learned trial Court is directed to disposed off the Special Civil Suit No. 94/2015 within a period of one year from today. The parties shall render their cooperation to the learned Judge in disposing off the proceedings.

[BHARATI H. DANGRE]
JUDGE