

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

23 WRIT PETITION NO.5200 OF 2022

CHETAN DIGAMBAR BORAWAKE AND OTHERS
VERSUS
AARTI DIGAMBAR BORAWAKE DIED THROUGH LRS SINDHUTAI
LAXMANRAO GHARMALKAR AND OTHERS

...
Advocate for Petitioners : Mr. S.S. Patunkar h/f. J.P. Legal Associates
Advocate for Respondents 1A & 1GA : Mrs. Rashmi S. Kulkarni
...

CORAM : MANGESH S. PATIL, J.
DATED : 13/06/2022.

PER COURT :

1. Heard learned counsel Mr. V.S. Patunkar for the petitioners and Mrs. Rashmi S. Kulkarni for respondent Nos. 1A and 1GA.
2. Petitioners are the original defendants in a suit filed by Aarti, claiming herself to be a legally wedded wife of one Digamber and seeking declaration that she was entitled to have half of the suit properties and also sought to take exception to couple of gift deeds executed by petitioner No. 3 herein and also claiming declaration that the petitioners are not related to Digamber.
3. The petitioners contested the suit by filing their written statement and denied that Aarti was legally wedded wife of Digamber and claimed that petitioner Nos. 1 and 2 are his legitimate children.
4. During pendency of the suit Aarti died. One Vasant

Mahadev Boravake submitted an application (Exh. 198) claiming himself to be a full brother of Digamber. He prayed to come on record as legal representative of Aarti, apparently on the ground that Aarti being the legally wedded wife of Digamber and was not survived by any Class I heir and her right in the suit properties would be reverted back to the husband's relations in view of section 15 of the Hindu Succession Act.

5. The petitioners also opposed that application repeating their stand in their written statement. The trial Court rejected the application (Exh. 198) by the order dated 4 February 2021. Vasant once again moved another application (Exh. 205) seeking review of the order, rejecting his application (Exh. 198) on various grounds. After giving opportunity to the petitioners to contest the application, by the order under challenge in this writ petition, the trial Court has allowed the application (Exh. 205) and allowed Vasant and other persons stated to be full brother and sisters of Digamber to come on record as legal representatives of the original plaintiff Aarti and also permitted them to seek amendment of the pleadings.

6. The whole emphasis of the learned advocate Mr. Patunkar for the petitioners is on the fact that there is a serious dispute as to the right, title and interest of the third persons claiming to be legal

representatives of Aarti. In the light of the provisions of Order 22, Rule 5 of the Code of Civil Procedure the trial Court ought to have undertaken a scrutiny of the fact as to whether they are indeed her legal representatives. In any case, there was no formal defect in the order whereby application (Exh. 198) was rejected. Without there being sufficient and cogent reasons, the trial Court has undertaken the review and has reversed the earlier order, permitting the third party to participate.

7. Mrs. Kulkarni supports the order under challenge.

8. Aarti had filed the suit claiming to be the legally wedded wife of Digamber and claimed her share in the suit properties. Digamber is no more. Admittedly, Arti is also not survived by any legal heir in the sense that she died issueless. Going by the stand of the petitioners in their say, opposing the application (Exh. 198) though they have been disputing that Aarti is the legally wedded wife of Digamber, they did not specifically dispute the fact that the third parties namely Vasant and other sisters are infact full brother and full sisters of Digamber.

9. Certainly, whether Aarti was legally wedded wife of Digamber would be a matter in issue to be pondered and decided by the trial Court. There is no dispute about the fact that claiming herself

to be the legally wedded wife of Digamber, she sought to lay a claim over his property. By virtue of section 15 of the Hindu Succession Act since she has died issueless, being the relations of Digamber, these third parties would be entitled to succeed to the suit properties. Again this would be the position contingent upon the findings to be recorded by the trial Court that Aarti was legally wedded wife of Digamber and was entitled to lay a claim to his properties.

10. Certainly, by virtue of the provisions of Order 22, Rule 5 of the Code of C.P. the trial Court would be obliged to decide if in the particular facts and circumstances of the case, these third parties can be said to be legal representatives entitled to prosecute the cause of Aarti. At this preliminary stage, based on the reasoning given by the trial Court while rejecting the application (Exh. 198) the trial Court had not gone into the circumstance that rightly or wrongly names of Vasant and his sisters were mutated to the suit properties and the petitioners had approached the revenue authorities impugning the mutation.

11. The trial Court has merely permitted third parties to prosecute the suit. It cannot be said that the order finally recognizes right of the third parties in the suit properties. It would all depend upon several disputed questions of facts which will have to be

answered before arriving at a definite conclusion. The petitioners have been granted leave to amend their pleadings and merely by allowing third parties to come on record would not cause any prejudice to them. It would be appropriate that the trial Court is now allowed to decide all the rival claims on their own merits by extending an opportunity of being heard to both the sides.

12. Going by the reasoning given by the trial Court in the order under challenge, this Court need not interfere in the order.

13. The Writ Petition is dismissed. All the issues shall be gone into and decided by the trial Court.

[MANGESH S. PATIL, J.]

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