

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2390 OF 2018

1. Kashinath s/o Umaji Bedare
age 67 years, occ. Agriculture
r/o Pathri, Tq. Pathri
Dist. Parbhani

2. Bharat s/o Kashinath Bedare
age 46 years, occ. Agriculture
r/o Pathri, Tq. Pathri
Dist. Parbhani

Petitioners

Versus

1. Nirmala w/o Bharat Bedare
age 43 years, occ. Nil,
r/o At present Ashti
Tq. Partur, Dist. Jalna

2. Pooja d/o Bharat Bedare
age 20 years, occ. Education
r/o At present Ashti
Tq. Partur, Dist. Jalna.

3. Kashibai w/o Kashinath Bedare
age 62 years, occ. Household
r/o Pathri, Tq. Pathri,
Dist. Parbhani

Respondents

Mr. B. V. Thombre, Advocate holding for Mr. P. V. Kalani, Advocate for the petitioners.

Mr. V. B. Deshmukh, Advocate for respondents No. 1 and 2.

CORAM : M.G. Sewlikar, J.

DATE : 28th JULY, 2022.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. With the consent of the parties, taken up for final hearing at the stage of admission.
3. Facts leading to this petition are that respondent No. 1 is the wife of petitioner No. 2 and respondent No. 2 is the daughter of petitioners No. 1 and 2. Petitioner No. 2 is the father-in-law of respondent No. 3.
4. Respondent No. 1 filed Regular Civil Suit No. 31/2014 at Pathri, Dist. Parbhani, for maintenance. In this suit, initially, petitioners and respondent No. 3 only were the parties. In the year 2017, application for impleadment of petitioner No. 2 was made. Another application Exhibit 47 was made for appointment of petitioner No. 1 as the next friend. Both these applications were heard by the learned Civil Judge, Junior Division, Pathri. By order dated 5th July, 2017, both these applications were allowed by the impugned order. This order is impugned in this petition.

5. I have heard learned counsel for the petitioners and learned counsel for respondents No. 1 and 2.

6. Learned counsel for petitioners submits that after a period of three years, this application was moved by respondents No. 1 and 2. He further submits that in terms of Order 1 Rule 10 of the Code of Civil Procedure, and in terms of Order 32 Rule 4(4) of the Code of Civil Procedure, consent of the proposed next friend or guardian is required to be obtained before appointing him as the next friend. He submits that no such consent was given. Therefore, the order is illegal and cannot be sustained.

7. Learned counsel for respondents No. 1 and 2 supports the order passed by the learned Trial Court.

8. Order 1 Rule 10(3) of the Code of Civil Procedure contemplates appointment of next friend of the plaintiff with his consent. The rule is worded negatively which reads thus :-

10. Suit in name of wrong plaintiff -

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

A bare reading of this rule makes out that it refers only to the plaintiff and not to the defendant. Therefore, this rule is of no assistance to the petitioner.

9. On reading application Exhibit 47 and the order passed on it, it is seen that the application was filed for appointment of petitioner No. 1 as next friend of petitioner No. 2. Petitioner No. 1 was called upon to file his say. Petitioner No. 1 has filed his say. He has nowhere contended that he does not consent for being appointed as the next friend. The only say he has given is that the suit is old and it is posted for argument and this application is filed just to protract the litigation. From this say, it cannot be carved out as to whether the petitioner No. 1 did not give consent and without his consent, he came to be appointed as the next friend.

11. In this view of the matter, the petition is devoid of any

substance hence it is dismissed. No costs. Rule discharged.

(M. G. SEWLIKAR)
Judge

dyb