

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

WRIT PETITION NO. 6146 OF 2022

Smt. Malika Rafique Sikilkar & Ors.

..Petitioner/s

v/s.

Sau Rizwana Shabbir Attar

..Respondent

Mr. S.S.Patwardhan a/w. Mrinal Shelar for the Petitioner/s.

Mr. Sumant Deshpande for the Respondent.

CORAM : ANUJA PRABHUDESSAI, J.

DATED : 10th AUGUST, 2022.

P.C.

1. The Petitioner herein has challenged the order dated 4th January, 2022, whereby the learned Civil Judge, Senior Division, Khed-Rajguru Nagar has allowed the application for amendment filed by the Respondent.

2. Heard Shri Patwardan, learned Counsel for the Petitioner and Shri Deshpande, learned Counsel for the Respondent. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties.

3. The Respondent herein, who was the Plaintiff in the suit has filed the suit for partition. The subject matter of the suit is the property which was originally owned by Abdul Karim Sikilkar, who expired on 29.07.1979. It is stated that said Abdul Karim Sikilkar had four sons.

Digitally
signed by
PRASANNA P
SALGAONKAR
Date:
2022.08.17
11:39:30
+0530

PRASANNA P
SALGAONKAR

The Respondent-Plaintiff claims to be the daughter of Nabilal who was one of the sons of said Abdul Karim Sikilkar. It is the case of the Respondent that said Nabilal was last treated in Sasoon Hospital in the year 1982 and that thereafter his whereabouts are not known. Whereas, the Petitioner has claimed that Nabilal had expired on 12.02.1978 and since he had pre-deceased Abdul Karim Sikilkar, Respondent-Plaintiff has no right to the property of Abdul Karim Sikilkar. The Respondent had annexed the death certificate along with the written statement filed on 16.03.2021. In view of filing of the Death Certificate of said Nabilal, the Respondent Plaintiff sought to amend the pleading by elaborating that said Nabilal had taken treatment in Sasoon Hospital in the year 1982, and thereafter his whereabouts are not known. The Respondent-Plaintiff has also challenged the authenticity of the Death Certificate issued by the Pune Municipal Corporation. The Respondent has also stated that after filing of the written statement they have learnt that the suit property was already sold to third party. Hence the Respondent Plaintiff sought to implead the purchasers, and has further sought declaration that the sale deed dated 31.12.2020 and 19.01.2021 is not binding on her.

4. It is stated that the date of death of Nabilal is crucial. If it is held that said Nabilal had expired on 12.2.1978 i.e. if he had predeceased Abdul Karim Sikilkar, the Plaintiff would have no right to the suit property. It is in this context the pleadings regarding the date of death

of said Nabilal are relevant to decide the issue in this suit. The Plaintiff has not introduced any new case which is inconsistent with the pleadings. Moreover, the application was filed immediately after filing of the written statement and before commencement of trial.

5. Suffice it to say that no prejudice is caused to the Petitioners as they have ample opportunity to file additional written statement and to meet the case of the Plaintiff in the additional pleadings.

6. Considering the above facts and circumstances, no ground is made out to interfere with the impugned order. Hence the application is dismissed.

(ANUJA PRABHUDESSAI, J.)