

VAISHALI
ANIL
TIKAM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11715 OF 2022

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Smt. Indu Dnyaneshwar Sawant, alias
Indubai Mahadev Murhe & Ors.Petitioners
V/s.

Sou. Sindhu alias Sitabai Vishnu
Kedari and Ors.Respondents

Mr. Dorman J. Dalal, Advocate for the Petitioners.

CORAM : SANDEEP K. SHINDE, J.
MONDAY, 3RD OCTOBER, 2022.

P.C. :

1. Heard learned counsel for the Petitioners.
2. Petitioners are Defendant Nos. 5 to 8 in the Special Civil Suit No. 600/2022 instituted by the Respondent No.1 for partition. They sought transposition as plaintiffs under Order 1 Rule 10(2) of Civil Procedure Code. The Plaintiffs objected to the transposition. Whereupon, on 22nd June, 2022 transposition was granted. Order , reads as under;

“Perused the application and say. Say filed by the plaintiff clearly indicates that applicants are step sisters.

Application is filed for transposition of applicants as plaintiff. Considering contents of the plaint and say by the plaintiff they can be transposed as Plaintiffs. Hence, the order . Application is allowed.”

3. The above order on the face of it indicates;
 - (i) that the Plaintiffs were not heard; and
 - (ii) their objections to transposition were not dealt with.
4. Noticing irregularity in and illegality of the order, Plaintiffs sought its review. The Trial Court allowed the review vide order dated 14th July, 2022 and as a consequence thereof, rejected the transposition application below Exh. 153 preferred by the Defendant Nos. 5 to 8, Petitioners herein. Feeling aggrieved and dissatisfied with these two orders, the Petitioners have approached this Court.
3. Learned counsel for the Petitioners contended that the application moved by the Plaintiffs seeking review of order dated 22nd June, 2022 itself was not

maintainable in view of limited jurisdiction, under Order 47 Rule 1 of CPC and therefore, order dated 14th June, 2022, calls for interference.

5. I have perused application Exhibit '153' filed by the Plaintiffs. In my view the appropriate remedy was to challenge the order dated 22nd June, 2022 by filing the appropriate proceedings and not to seek review thereof. However, the fact remains that the order dated 22nd July, 2022 as reproduced above, does not indicate that the Learned Trial Judge while allowing the transposition, has dealt with the Plaintiffs' objections to transposition. In that view of the matter, in the interest of justice and without addressing the issues on merits, I deem it appropriate to set aside the impugned orders dated 14th July, 2022 and 22nd June, 2022, and relegate parties to the trial Court for reconsideration of the transposition sought by the Petitioners.

6. Accordingly these two orders are set aside. In consideration of these facts, the application of the Defendant Nos. 5 to 8 below Exhibit 153 is restored to the file. The learned Trial Court shall decide the application on merits and after hearing all the parties concerned, in accordance with law.

7. The Petition is partly allowed and disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)