

Arjun

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

WRIT PETITION NO.447 OF 2015

Shri. Badrinarayan Ramlal Kakani ...Petitioners
Deceased through heirs:
Jagdish Badrinarayan Kakani & Ors.
V/s.

Dr. Shriniwas Zumbarlal Kakani ...Respondents
Deceased through his proposed legal heirs :
Smt. Bharati Shriniwas Kakani & Ors.

Mr. Milind M. Sathaye, for the Petitioners.

Mr. N. R. Bubna, for Respondent No. 1-B.

CORAM : MADHAV J. JAMDAR, J.
DATE : 10th NOVEMBER, 2022

P.C.:

1. Heard Mr. Sathaye, learned counsel appearing for the Petitioners and Mr. Bubna, learned counsel appearing for Respondent No. 1-B.

2. Mr. Sathaye states that all the Respondents have been served.

3. In the present Writ Petition, the Petitioners who are legal representatives of deceased sole plaintiff are

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challenging legality and validity of Order dated 14th August, 2014 passed below Exh. 41 in Special Civil Suit No. 4 of 2006 by the learned Civil Judge Senior Division, Malegaon as well as Order dated 1st October, 2014 passed below Exh. 42 & Exh. 1 in Summary Suit No. 4 of 2006.

4. By the impugned order dated 14th August, 2014 application bearing Exh. 41 filed by the Petitioners seeking permission to carry out amendment in the cause title as per Order dated 16th September, 2013 passed below Exh. 32 and Exh. 36 is declined. Application bearing Exh. 42 was filed for review of Order passed below Exh. 41 and for clarification of Order passed below Exh. 32. Said Exh. 42 application is dismissed by the impugned Order dated 1st October, 2014.

5. The Original plaintiff expired on 18th November, 2012 and within time i.e. on 15th February, 2013, the application bearing Exh. 32 has been filed seeking that names of 5 legal heirs be brought on record. Thereafter, another application bearing Exh. 36 has been filed on 4th May, 2013 seeking that names of additional 2 legal heirs of the deceased plaintiff be brought on record. There is no dispute that, these 7 persons are the legal heirs of the deceased plaintiff.

6. By order dated 16th September, 2013 passed below Exh. 36, the said application was allowed and plaintiff was directed to carry out necessary amendment forthwith.

7. Separate order dated 16th September, 2013 was passed below Exh. 32 in following manner :

"Order below Ex. 32

Perused application. For the reasons stated below Ex. 36, application is allowed. All L.R.s of Plaintiff to continue the suit."

8. Pursuant to said orders dated 16th September, 2013 cause title of the plaint was not amended and, therefore, application bearing Exh. 41 was filed and the same was rejected by impugned order dated 14th August, 2014.

9. Thereafter, another application bearing Exh. 42 dated 19th August, 2014 was filed. In the said application, it has been specifically contended that, once application for bringing on record legal heirs is allowed, to amend cause title in accordance with the said order is a ministerial act. It is further mentioned that as the order dated 16th September, 2013 passed below Exh. 32 was not clear and, therefore, amendment could not be made. The said application was also

dismissed by order dated 1st October, 2014.

10. It is the contention of Mr. Sathaye, learned counsel appearing for the Petitioners that applications were filed as set out hereinbelow for bringing on record heirs of deceased plaintiff and the same were allowed. He submitted that order passed below Exh. 32 states that all legal representatives of plaintiff to continue the suit. Therefore, the Petitioners were under bonafide impression that amendment may not be necessary. He further submitted that the applications for bringing on record legal heirs of deceased plaintiff were allowed which is a judicial act and correcting the title of the plaint in accordance with the said orders is a ministerial act and, therefore, the impugned orders are passed without taking into consideration the said aspect. To substantiate said contention he relied on judgment of Supreme Court reported in (2003) 10 SCC 691 in the matter between *Mithailal Dalsangar Singh & Ors. Vs Annabai Devram Kini & Ors.* and judgment of this Court reported in (2003) 2 Mh.L.J. 894 in the matter between *Harjit Kaur Kuljitsingh Kohli Vs Padmavati J. Sethia & Ors.*

11. On the other hand, Mr. Bubna, learned counsel

appearing for Respondent No. 1-B submitted that this Court could not come to the aid of the litigant who has slept over his rights. He submitted that the applications seeking to bring on record legal heirs of deceased plaintiff was allowed on 16th September, 2013 and for the first time on 14th August, 2014 application bearing Exh. 41 was filed seeking permission to amend cause title. He therefore, supported impugned orders.

12. At the outset, it is necessary to state that order passed below Exh. 32 specifically mentions that for the reasons set out in application passed below Exh. 36, the said application was allowed and it is specifically further directed that all legal representatives of plaintiff to continue the suit. Thus, there is no time limit granted for carrying out amendment and, in fact, it is specifically directed that all the legal representatives of plaintiff to continue the suit.

13. The learned Judge while passing order dated 14th August, 2014 has relied on Order VI rule 18 of Civil Procedure Code. However, it is to be noted that, Order VI Rule 18 is with reference to Order VI rule 17 which is concerning amendment of pleadings and therefore it has no application

to the present case.

14. As far as the present case is concerned, the applicable provision is Order XXII rule 3. In this case, applications for bringing on record legal heirs of deceased sole plaintiff were already allowed and what has remained to be done is only a ministerial act of amending the cause title.

15. This Court in *Harjit Kaur Kuljitsingh Kohli* (supra) relying on paragraph 96 of the Civil Manual observed in paragraphs (7) and (15) as follows:

"7. As already seen above, Rule 4 of Order XXII of the Code of Civil Procedure, in fact, enjoins a duty upon Court to "cause the legal representative of the deceased defendant to be made a party" on an application having been filed by the plaintiff within the time limit prescribed by law to bring the legal representative of the deceased defendant on record. It has been further clarified in para 96 of the Civil Manual and, sub-para 96 thereof provides thus:

"It shall be the responsibility of the plaintiff to bring on record the correct legal representative of the deceased defendant within the prescribed period of limitation, in the circumstances mentioned in sub-rule (1) of

Rule 4 of Order XXII, by making an application upon affidavit proposing the name of the Legal Representative of the deceased defendant to be brought on record.”

Further sub-para (3) thereof provides thus:—

“If the application is made within the prescribed period of limitation, the Court shall order, without issuing previously any notice to the proposed legal representative, that the plaint be amended by adding the legal representative as a party to the suit in place of the deceased defendant and that summons in No. 6 referred to above be issued to him. It shall be open to the legal representative so added as a party to dispute his character as a legal representative when he is served with a summons in Form No. 6 referred to above, and the Court shall decide the dispute under Rule 5 of Order XXII.”

“15. In the case in hand, it is also apparent that the petitioner having failed to secure favourable order on merits and, having realized weakness of her case, the objection about abatement of suit is sought to be raised.

It is nothing but a desperate attempt to non-suit the respondent/plaintiff on the basis of technicalities as rightly observed by the lower appellate Court. However, it is to be observed that the order directing to bring the legal representatives on record is not a ministerial act as is sought to be observed by the lower appellate Court. It has to be a judicial order and, no judicial order can be termed as a ministerial act, though giving effect to such judicial order, may at times be a ministerial act. The decision which is required by the Court on an application filed by the plaintiff seeking legal representatives of the deceased defendant to be brought on record has to be decided on application of mind and, after ascertaining whether the said application is within the prescribed period or not and whether it satisfies the requirements of Order XXII of the Code of Civil Procedure.”

It is clear that although granting application to bring on record legal heirs of deceased plaintiff/defendant is judicial act, giving effect to the same by actually amending the cause title is ministerial act.

16. The Supreme Court judgment in *Mithailal Dalsangar*

Singh & Ors. (supra) also clarified the legal position that, although, consideration of application for bringing on record legal heirs of either deceased plaintiff or deceased defendant is a judicial act, however, amending the cause title of the plaint, pursuant to such judicial order is a ministerial act.

17. In the present case, the order passed below Exh. 32 directed legal representatives of plaintiff to continue the suit. Mr. Sathaye, contends that there is some confusion which has been caused due to the said order as the said order can be interpreted to mean that legal heirs to continue the said suit without making formal amendment in the cause title of the suit. In any case, as amending cause title is merely a ministerial act, the order dated 14th August, 2014 passed below Exh. 41 in Special Civil Suit No. 4 of 2006 and order passed below Exh. 42 and Exh. 1 dated 1st October, 2014 are quashed and set aside.

18. The Petitioners to amend the cause title of the plaint in accordance with the application bearing Exh. 32 and 36 within a period of four weeks from today.

19. At this stage, Mr. Sathaye, fairly submits that the Petitioners will pay cost of Rs. 15,000/- to the Respondent

No. 1-B on behalf all the Respondents. Such cost be paid within a period of three weeks from today.

20. Writ Petition is disposed of in above terms.

(MADHAV J. JAMDAR, J.)