

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4903 OF 2021

Anantrao Sampatrao Chavhan and Others

...Petitioners

Versus

Vinayak Sampatrao Chavhan and Others

..Respondents

Adv. Tushar Sonawane a/w Adv. Pooja Satpute for the Petitioners.

Adv. Vinayak Kumbhar i/b. Adv. Ashwini N. Bandiwadekar for Respondent No.1.

Coram : Sharmila U. Deshmukh, J.

Date : 17th July , 2023.

P. C. :

1. Heard.

2. The Petition questions the order passed below Exhibit 90 and Exhibit 92 in Special Civil Suit No.301 of 2012 rejecting the applications. Exhibit 90 was preferred by the Petitioners-original Plaintiffs seeking to set aside the abatement against the original Defendant No.2-Respondent No.2. Exhibit 92 was preferred for condonation of delay caused in filing the Application for setting aside the abatement.

3. Heard Mr. Tushar Sonawane, learned counsel for the Petitioners and Mr. Vinayak Kumbhar, learned counsel for Respondent No.1.

4. Learned counsel appearing for the Petitioners submit that the suit is for partition and declaration and as such the Petitioners were under an impression that all the legal heirs were on record hence no application was filed for bringing the legal heirs of the deceased Defendant No.2 on record. He would submit that the daughter of the deceased Defendant No.2 was required to be brought on record and as such he would plead in the interest of justice he be permitted to bring her on record. He would further submit that pursuant to the order of this Court dated 1st September, 2021 the Petitioners have deposited cost of Rs.10,000/- which may be permitted to be withdrawn by the Respondent No.1.

5. *Per contra*, learned counsel appearing for the Respondent No.1 submits that in the suit for partition the Petitioners were expected to add the legal heirs of deceased Defendant No.2 and inspite thereof failed to bring legal heirs within the prescribed time and as the suit has abated against all the Defendants.

6. Considered the submissions.

7. The application for condonation of delay in bringing legal heirs on record and for setting aside the abatement have been rejected on the ground that even after filing of the pursis regarding

death of the Defendant No.2 no steps were taken by the Petitioners within the prescribed time. The trial Court declined to accept the explanation which was tendered by the original Plaintiffs to set aside the abatement order for the reason that it is the duty of the litigant to be vigilant.

8. Considering that the suit is a suit for partition in which all the parties will be interested in getting their shares of ancestral property, in my opinion in the interest of justice the Petitioners can be permitted to bring on record the legal heirs of the deceased Defendant No.2 and for that purpose the impugned orders dated 16th February, 2019 are hereby quashed and set aside. The cost of Rs.10,000/- deposited in the trial Court on 14th September, 2021 is permitted to be withdrawn by the Respondent No.1.

9. Writ Petition stands allowed.

[Sharmila U. Deshmukh, J.]