

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9256 OF 2013
WITH
INTERIM APPLICATION NO. 836 OF 2023

Shri. Anandrao Rau Patil Since Deceased

By legal Heirs

...Petitioner/Applicants

Versus

Sau. Sajjaka Anandrao Patil

Since Deceased by legal Heirs and Ors.

...Respondents

WITH
WRIT PETITION NO. 9716 OF 2013

Sou. Ranubai @ Ashwini Ananda Patil and Anr. ...Petitioners

Versus

Sou. Sajjaka Anandrao Patil and Anr.

...Respondents

...

Mr. V.B. Rajure, for Petitioner/Applicant in both Petitions.

Mr. Bhooshan R. Mandlik, for Respondent.

...

CORAM : SANDEEP V. MARNE, J.

DATE : OCTOBER 10, 2023.

P.C.:

WRIT PETITION NO. 9256 OF 2013 :-

1. This Petition is filed by Anandrao Rau Patil, who was impleaded

in R.C.S. No.300 of 2012 as Defendant No.1. It appears that two women claimed to be legally wedded wives of Anandrao Rau Patil. Sajjakka Anandrao Patil claims that she is the first legally wedded wife and Dilipkumar is the son born out of wedlock between Anandrao & Sajjakka. It is the contention of Sajjakka and Dilipkumar that the another lady named Saubai Bapu Patil, who describes herself as Saubai Anandrao Patil, is not related to Anandrao in any manner. That Saubai is not legally wedded wife of the Anandrao. Appaso Patil claims himself to be the son born out of alleged wedlock between Anandrao & Saubai. The dispute is about Anandrao's property. Sajjakka and Dilipkumar claim a share in Anandrao's property and have filed R.C.S. No.300 of 2012 for partition against Anandrao, Saubai, Appaso and others.

2. In the Suit, an order was passed against Anandrao for payment of interim maintenance. On an allegation that Anandrao failed to obey the order passed by the Trial Court, application was moved for striking off the defence of Anandrao (Defendant No.1). By order dated 9 July 2013, the Trial Court allowed the application and has struck off defence of Anandrao (Defendant No.1). Order dated 9 July 2013 is subject matter of challenge in Writ Petition No.9256 of 2013.

3. During pendency of the present Petition, Anandrao has expired. Now there is a contest between Sajjakka & Saubai as to who should represent Anandrao. It appears that Sajjakka has also died during pendency of the suit. Dilipkumar (Sajjakka's Son) filed an application before the Trial Court, who bring himself on record as legal heir of Anandrao. That application has been allowed and Saubai & Appaso and aggrieved by the decision of the Trial Court in bringing Dilipkumar as legal heir of Anandrao and have filed an application for review of the order, which is pending.

4. Be that as it may, as of today Defendant No.1 (Anandrao) whose defence is struck off, is no longer alive. In the Suit, a joint written statement has been filed by Anandrao and Saubai. Thus the defence of Saubai is already on record. The contest claimed between two women claiming to be the wives of Anandrao is with regard to Anandrao's estate. In my view, now that Anandrao is no more, it is not necessary to take into account the defence of Anandrao for deciding the suit. Now the *lis* is between the two women (Sajjakka and Saubai) claiming to be wives of Anandrao and the same will have to be decided by the Trial Court in the pending suit.

5. There is also dispute about who should represent Anandrao. Interim Application No.836 of 2023 is filed to bring on record Saubai,

Appaso and Appaso's Children as legal heirs of Anandrao. The interim application is opposed by the learned counsel appearing for Respondents/Original Plaintiffs. As observed above in the Suit, Dilipkumar has got himself brought on record as legal heir of Anandrao. Saubai and Appaso are opposed to that order passed by the Trial Court and have filed a review, which is pending. In my view it is not really necessary for either of the contesting parties to represent Anandrao. Otherwise, the suit will get further derailed on the dispute as to who shall represent Anandrao. The core issue in the suit is, who exactly is the legally wedded wife of the Anandrao and who would succeed to his estate. As of today, Dilipkumar can prosecute the suit, which can be defended by Saubai, Appaso and others. It is also required to be noted that Dilipkumar representing Anandrao would result in an anomalous situation where Dilipkumar will become both Plaintiff and Defendant in the same Suit. In that view of the matter, neither anyone needs to represent Anandrao as legal heirs nor defence of Anandrao pleaded in his written statement would really matter. Also of relevance is fact that the defence of Anandrao and Saubai is same as a joint written statement has been filed.

6. Accordingly, Writ Petition is disposed by permitting Saubai to prove the defence taken in the written statement jointly filed with Anandrao.

WRIT PETITION NO. 9716 OF 2013:-

7. Writ Petition No.9716 of 2013 is filed by Ranubai and Mangala claiming to be daughters born out of wedlock between Anandrao and Saubai. Their contention is that they want to participate in the suit as they have right, title and interest in the estate of Anandrao. It appears that the Plaintiffs have already impleaded Appaso (alleged son of Anandrao) as party Defendant No.3. Once the alleged son is impleaded, I do see any reason why the alleged daughters should be kept away from the suit. Perusal of the impugned order dated 9 July 2013, by which daughters' application is rejected, would show that a Trial Court has entered into the merits of the matter and made observations as to whether the daughters would have any right in the suit property. In my view, such observations were quite unnecessary while deciding application for impleadment under provisions of order 1 Rule 10 of the Code of Civil Procedure.

8. Writ Petition No.9716 of 2013 accordingly succeeds. The application filed by Ranubai and Mangala at Exhibit-148 stands allowed in terms of prayers made therein.

9. With the above directions, both the Writ Petition are disposed of. The Trial Court to proceed with the hearing of the suit in an expeditious

manner.

10. In view of disposal of Petitions, Interim Application does not survive and stands disposed of.

(SANDEEP V. MARNE, J.)