

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14616 OF 2022

Sagar @ Mahesh Shivajirao Jondhale

.. Petitioner

Versus

Varsha Jondhle and Ors.

.. Respondents

.....

- Mr. Kishor Patil i./by Mr. Pratik B. Rahade for Petitioner
- Mr. Venkatesh Dhond i./by Mr. Jayesh Gawde for Respondent No.1
- Mr. Dharendra Simba for Respondent Nos.2 and 3

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 30, 2023

P.C.:

1. Heard Mr. Patil, learned Advocate for Petitioner; Mr. Dhond, learned Advocate for Respondent No.1 and Mr. Simba, learned Advocate for Respondent Nos.2 and 3.
2. This Court passed the following order on 20.01.2023:-

“1. The present Writ Petition takes exception to the order dated 10.08.2022 passed by the learned Trial Court in Chamber Summons No.794 of 2022 filed by the Petitioner (Applicant therein) seeking impleadment as a proposed Defendant in the Suit filed by Respondent No.1. The original Suit has been filed by Respondent No.1 as Plaintiff against Defendant Nos.1 and 2 seeking a declaration that she is the biological child of Defendant Nos.1 and 2. In so far as the Petitioner is concerned, he has filed Intervention Application i.e. Chamber Summons No.794 of 2022 being the son of the Defendant No.1.

2. Mr. Patil would submit that the Petitioner alongwith his mother i.e. Defendant No.1 and brother had filed Commercial Suit (L) No.133 of 2018 and now numbered as Suit No.276 of 2018 in this Court seeking an injunction to restrain the Plaintiff and her brother from misusing the family name. It is contended by the Petitioner that Plaintiff was born during continuation of marriage of

Defendant No.2 with one Rajesh Khare and all her documentary evidence i.e. the school record shows that name. It is contended by the Petitioner that the Suit before the learned Trial Court has been filed with mala fide intention for adopting surname "Jondhale". It is further contended that considering that Petitioner has already filed the substantive Suit in this Court for the same cause of action, the Suit filed before the City Civil Court by the Plaintiff is therefore barred by Section 10 of the Civil Procedure Code, 1908.

3. The learned Trial Court has considered the aforesaid submissions and has returned his findings in paragraph No.9 of the impugned order. It is contended by the learned Trial Court that the Petitioner would have no role to play whatsoever in the Suit filed by the Plaintiff and hence the Chamber Summons has been dismissed. It is seen that while giving the findings the learned Trial Court has not referred to the Suit filed by the Petitioner in this Court, considered the same and given reasons.

4. An arguable case is made out by Mr. Patil, learned Advocate for Petitioner.

5. Issue notice to Respondents. In addition to service of notice through Court, Petitioner shall serve a copy of the Petition on Respondents and inform them about the next date of hearing by any permissible mode of service and file affidavit of service with tangible proof thereof before the returnable date.

6. Respondents are directed to file their Affidavit-in-Reply, if any within a period of three weeks from today. Rejoinder, if any, to be filed within one week thereafter.

7. Ad-interim relief in terms of prayer clause (b) is granted.

8. Stand over to 30th January, 2023. To be placed High on Board."

3. Mr. Dhond, learned Advocate appearing for the contesting Respondent No.1 would submit that in respect of the suit filed by the Respondent No.1 in the Trial Court the only relief in said suit is in respect of establishing the biological parentage of Respondent No.1 on basis of record. That apart, there is no other relief in the said suit. Hence impleadment of Petitioner therein is not necessary. On perusal

of the suit plaint and the prayers, Mr. Dhond would be right in his contentions.

4. *Per Contra* Mr. Patil would submit that he has filed a Commercial Suit bearing No.276 of 2018 in this Court. In that suit, a dispute has been raised by him against the Respondent No.1 regarding property belonging to the parents. He agrees that the said suit is a separate cause of action. He has therefore expressed apprehension. However, his apprehension can be addressed. But the impugned order deserves to be upheld.

5. In view of the above, the impugned order passed in the Chamber Summons No.794 of 2022 rejecting impleadment of the Petitioner is sustained.

6. Needless to state that, the rights of the parties in the Commercial Suit filed in this Court are expressly kept open and the said suit would be tried on its own merits and strictly in accordance with law.

7. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
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