

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 384 OF 2023

Rajaram Genaba Kolape and Anr. .. Petitioners
 Versus
 Popat Genaba Kolape and Ors. .. Respondents

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- Mr. Vivek V. Salunke for Petitioners
 - Mr. Drupad S. Patil for Respondents
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 10, 2023.

P.C.:

1. On 20.01.2023 this Court has passed the following order:

"1. Heard Mr. Salunke, learned Advocate for Petitioners.

2. Perused the impugned order below Exh.1 passed in RCS No.441 of 2015 as also the order below Exh. 71 dated 19.12.2022 passed by the learned Trial Court. The impugned order proceeds on the basis that order below Exh. 71 would govern the field by virtue of which the suit was liable to be dismissed due to abatement of the suit.

3.Perusal of the order dated 19.12.2022 shows that the Application is allowed for setting aside abatement since no steps were taken by the surviving Plaintiff in order to bring on record the legal heirs of deceased Plaintiff No. 2.

4.Mr. Salunke, learned Advocate for Petitioner would submit that the legal heirs of deceased Plaintiff No. 2 were already on record and hence, no Application was required to be made save and except the Application seeking deletion of the name of Plaintiff No. 2. Mr.Salunke would further submit that the grandson of Plaintiff No. 2 had also filed Application below Exh.55 before the learned Trial Court for impleadment as a proper and necessary party as legal heirs of deceased Plaintiff No. 2. Save and except the grandson who had filed Application below Exh. 55, other legal heirs of deceased Plaintiff No. 2 were already on record.

5. In view of the above facts, it was open for the learned Trial Court to allow impleadment of the grandson as prayed for and also note the submissions of the Petitioner that the legal heirs of deceased Plaintiff No. 2 were already on record. Without

considering this submission, the learned Trial Court has passed order below Exh. 71.

6. An arguable case has been made out by Mr. Salunke. Hence, issue notice to Respondent Nos. 9 and 10. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date.

7. After receiving the notice, Respondents to file affidavit-in-reply within one week. Rejoinder if any shall be filed within one week thereafter.

8. In the meanwhile, parties are directed to maintain status quo as of today.

*9. Stand over to **10th February, 2023**. It is clarified that this Petition shall be disposed of on that date”.*

2. In view of the above, by consent of both the learned Advocates and in view of the specific observations in paragraph No.5 of the above order application below Exh.71 shall stand dismissed. Needless to state that the two impugned orders below Exh.71 and Exh.1 are quashed and set aside.

3. It is directed that impleadment of the grandson to the suit proceedings shall be permitted by the learned Trial Court. The impleadment of the grandson sought below Exh.55 shall be allowed by the learned Trial Court.

4. Parties are directed to take necessary steps accordingly.

5. In the meanwhile, status quo shall be maintained for a further period of two weeks to enable the Petitioners to move Exh.5 before the learned Trial Court and obtain appropriate orders.

6. It is clarified that Exh.5 Application, if filed shall be decided

strictly in accordance with law on its own merits by passing a reasoned order by the learned Trial Court within a period of four weeks from the date of its filing and service on Respondents.

7. All contentions of the parties are expressly kept open.
8. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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by SONALI
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