

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAS) NO.413 OF 2023

IN

SECOND APPEAL NO. 547 OF 2019

(SMT. SUMATI @ ASHA ANIL SUBHEDAR & OTH..VS.. SMT. YASHODHARA SUNIL SUBHEDAR &
OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Abhijeet Deshpande, Advocate for Appellants.
Shri S.P.Dharmadhikari, Sr. Advocate a/b Shri A.A. Sambaray, Adv. for R-1 to 3.
Shri C.S.Dharmadhikari, Advocate for Respondent No.4.
Shri K.N.Shukul, Advocate for Respondent Nos. 5 and 6.

CORAM : ANIL S. KILOR, J.

DATED : APRIL 13, 2023.

1. Heard.
2. This is an application moved by respondent No.2 for bringing Legal Representatives (LRs) of deceased respondent No.4 on record.
3. Shri Dharmadhikari, learned Senior Advocate argues that the respondent No.4 died on 16/02/2023 and since the defendant/respondent Nos.1 to 3 had filed a counter claim for partition and possession, they are plaintiffs in the counter claim and as such they can maintain this application for bringing LR's of the respondent No.4, which is filed at the instance of respondent No.2.
4. It is submitted that there is no restriction under Order XXII Rule 3 of the Code of Civil Procedure (CPC)

to move the application for bringing LRs on record by the respondent / defendant. It is submitted that the provisions of Order XXII Rule 3 of the CPC refers to the word “application”, but it does not say that it be filed by the plaintiff or defendant. He, therefore, submits that the respondent No.2 can maintain the application for bringing LRs of the respondent No.4, in absence of any application filed by the appellants for this purpose.

5. It is submitted that the respondents in the present appeal made a statement on 11/10/2021 that they will not proceed with the final decree. He, therefore, submits that though knowing well about the fact of death of the respondent No.4, non-filing of any application for bringing LRs of the respondent No.4 would delay the present proceedings and as the respondents are bound by their statement made before this Court, the respondents will suffer. He, therefore, submits that the application needs to be allowed.

6. On the other hand, Shri Deshpande, learned counsel for the appellants submits that being appellants, they are *Dominus Litis* and they would decide whether to bring the LRs of respondent No.4 on record or to face the consequences of the same.

7. It is submitted that, under the Law, as the limitation of 90 days is provided to apply for bringing LRs

on record, the appellants have every right/ choice to move the application at any time within 90 days. It is submitted that, however, the respondents cannot compel the appellants in this way to bring LRs on record. He, therefore, submits that even though the provisions of Order XXII Rule 3 of the CPC refers to the word “application” and does not specify who shall move it, however, Order XXII Rules 4 and 5 of CPC indicate that the application shall be filed by the plaintiff. He, therefore, submits that the present application is not maintainable at the instance of the respondent No.2 and further it is premature.

8. It is submitted that the appellants in their reply, have not stated that they do not want to file application for bringing LRs of the respondent No.4 on record. However, it is the choice of the appellant that at what stage and after how much period it should be moved during the period of limitation. He further submits that the appellants are ready to face the consequences, if the appellants fail to move such an application within the stipulated period.

9. In light of the rival submissions, I have perused the relevant provisions and the record.

10. The respondent No.2 has moved the present application to preclude the appellants from delaying the

matter, particularly because of their statement made before this Court on 11/10/2021 that they will not proceed with the final decree.

11. It is pointed out that Order XXII Rules 4 and 5 of CPC will not apply to this case and as Order XXII Rule 3 of the CPC does not indicate that the application would be filed by the plaintiff only.

12. However, as it is the stand of the appellants that the appellants would decide whether to bring the LRs on record or to face the consequences of it, I am of the opinion that the statement made by the respondent that the respondent will not proceed with the final decree, the said statement may be permitted to be withdrawn by the respondents. Accordingly on a request of the respondents the said statement is permitted to be withdrawn.

13. Nonetheless, it is necessary to observe that no doubt that for bringing LRs on record the limitation of 90 days is provided. However, despite the fact that the appellant/plaintiff is having knowledge about the death of the defendant/ respondent, the appellants take a stand that they will decide when to file such application, it amounts to stalling of the present proceedings.

14. In the present matter, though the application was moved for bringing LRs on record long back, the

appellants is opposing the same on hyper technical ground. Resultantly, this matter cannot be heard till the period of 90 days is over, which amounts to not allowing the Court to proceed with the matter. Therefore, such practice is deprecated.

15. Considering the statement of the appellants that it is their choice either to bring the LRs on record or to face the consequences, the Civil Application is **disposed of**. No order as to costs.

JUDGE

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