

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO. 21348 OF 2024

Sou. Harnabai Alias Parvati Dattatray Kamble
Since Deceased Throu. L.H. .. Petitioners

Versus

Bali Mahadeo Kamble .. Respondent

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- Mr. Yuvraj P. Narvankar for Petitioners.
 - Mr. Dheeraj Patil for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 19, 2024

P. C.:

1. This Writ Petition impugns twin orders dated 02.02.2024 passed below Exhibit 134 and dated 05.07.2024 passed below Exhibit 140. Application was filed below Exhibit 134 on 21.11.2023 seeking correction of name of one of the legal heirs of the deceased Defendant named Haranabai *alias* Parvati Dattatraya Kamble who expired in the interregnum on 16.09.2022. Petitioners filed Application on 01.11.2022 below Exhibit 121 to bring on record legal heirs of deceased Haranabai in the proceedings pending before Civil Judge, Senior Division at Kolhapur bearing MCA No. 186 of 2014 and in MCA No. 19 of 2023. The original Applicant also filed similar Application below Exhibit 123 for bringing on record legal heirs of deceased Haranabai. In this Application, names and details of the legal heirs

were not correctly spelt and there was some ambiguity in their nomenclature.

2. Application below Exhibit 123 was allowed and subsequent thereto Application below Exhibit 121 also came to be allowed. However, since then one incorrect name has crept in the order. Despite adequate material evidence being placed on record, it was realised subsequently by Petitioners that the said name needed to be corrected. The said name was of one of the legal heirs of Haranabai named “***Shobhatai Balu alias Balwant Naik***” as stated by the original Applicant in his application below Exhibit 123. However, the correct name of this legal heir according to Petitioners as per the record placed before the Trial Court is “***Shobha Balu Naik***”. Petitioners therefore sought correction of the said name as per her name in the public records by placing on record sufficient proof. Application of Petitioners filed below Exhibit 134 is rejected by order dated 02.02.2024 by Trial Court on the ground of insufficient evidence.

3. For rejecting the Application, learned Trial Court gives the reason that Petitioners have relied upon a photocopy of her PAN Card Application and there is no authentication of that document as it is not a document which is conclusive proof of her name as stated in the document.

4. Being aggrieved, Petitioners file a further Application below Exhibit 140 thereby invoking Section 151 of the Code of Civil Procedure, 1908 requiring to lead evidence to prove her correct name on the basis of public documents. By the second impugned order dated 05.07.2024, this Application is rejected by raising a doubt on the veracity of the documents produced.

5. I have heard Mr. Narvankar, learned Advocate for Petitioner and Mr. Patil, learned Advocate for Respondents.

6. I have perused both the twin impugned orders and I find that all that the learned Trial Court was required to do was to call for the original public documents from the Petitioners and more specifically pertaining to the legal heir namely “***Shobhatai Balu alias Balwant Naik***” and thereafter ascertain her correct name and pass the order. The learned Trial Court has not undertaken this simple exercise. Rather, the Trial Court has unnecessarily embarked upon an exercise which is completely irrelevant.

7. It is seen that both parties in the Civil Miscellaneous Application before the Trial Court have filed simultaneous Applications for bringing legal heirs of deceased Haranabai on record. One of her legal heirs is “***Shobha Balu Naik***” whose name has been shown to be “***Shobhatai Balu alias Balwant Naik***” by the Applicant. This incorrect

name is shown by the original Applicant (Respondent). This fact is noticed by Petitioners subsequently at the time of final arguments and is brought to the notice of the Court. Merely because this fact is noticed at the time of final arguments cannot be held against the Petitioners. Once such a mistake of name is noticed and brought to the notice of Court, the Court ought to have set it right.

8. No imputation can be attributed to the Petitioners. It is an issue of fact to be corrected on the basis of cogent record. The cogent record is the identity card issued by any Public Authority or any other material which shows the name of the said litigant / party correctly. Nothing else is contemplated for determining the Applications below Exhibit 134 and Exhibit 140. It appears that the learned Trial Court has passed both the twin orders with complete non-application of mind.

9. I have called upon Petitioners to place before me public documents depicting the name of the legal heir namely “***Shobha Balu Naik***”. Mr. Narvankar has placed before me her Aadhaar card bearing No. 3392 0509 9932 and her PAN card bearing no. BXYPN5215L which show her name as “***Shobha Balu Naik***”. Copies of the said documents are taken on record and marked ‘X’ for identification. Once the correct name is ascertained from the public documents as herein above, both impugned orders dated 02.02.2024 and 05.07.2024 are

not sustainable. Both the orders are therefore quashed and set aside.
Resultantly Application below Exhibit 134 stands allowed.

10. The learned Trial Court shall permit the Applicant (Respondent herein) to carry out the amendment of the correct name of the Respondent as “*Shobha Balu Naik*” in place of “*Shobhatai Balu alias Balwant Naik*”.

11. With the above directions, the Writ Petition is allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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