

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9 OF 2015

Shivram Bhima Sagale (since deceased) through
heirs Raju Shivram Sagale and Ors. .. Petitioners

Versus

Jijabai Shivram Sagale and Ors. .. Respondents

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- Ms. Neeta Tukaram Gaikwad, Advocate for Petitioners.
- Mr. N. R. Bubna, Advocate for Respondent Nos.1 to 3.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 27, 2024

P.C.:

1. Heard Ms. Gaikwad, learned Advocate for Petitioners and Mr. Bubna, learned Advocate for contesting Respondents.

2. The impugned order which is subject matter of the present Writ Petition is passed on 12.09.2014 by the learned Civil Judge Senior Division, Malegaon. The order is common order passed in Applications filed below Exhibit-248, Exhibit-250, Exhibit-254, Exhibit-278 and Exhibit-305. Briefly stated Special Civil Suit No.142 of 1994 is filed by one Raju Shivram Sagale seeking partition of the ancestral suit properties.

3. At this juncture, Ms. Gaikwad informs the Court that old number of the suit is Regular Civil Suit No.167 of 1986 whereas the new number is Regular Civil Suit No.137 of 2002. This is a companion

Suit filed by the Petitioner No.1 for partition of certain ancestral properties. Be that as it may, this Court is concerned with the impugned order dated 12.09.2014 which is a common order disposing the aforementioned Applications and as seen from the Writ Petition brief it is passed in Special Civil Suit No.142 of 1994. Shivram Bhima Sagale expired during the pendency of the suit leaving behind a Will. In the Will late Shivram Bhima Sagale bequeathed his entire estate to Jijabai Shivram Sagale. Jijabai Shivram Sagale and Shivram Bhima Sagale has two issues namely Ashok Shivram Sagale and Pushpa Shivram Sagale (Puspa Suresh Wagh).

4. Ms. Gaikwad raises a very strong opposition to the submissions made by Mr. Bubna. She would submit that in so far as Shivram Bhima Sagale is concerned, Hirabai Shivram Sagale was his legally wedded wife and through Hirabai Shivram Sagale, Shivram had two children namely Raju Shivram Sagale i.e. Plaintiff and Lata Shivram Sagale (Sou Lata Madhukar Sagale). She would submit that the learned Trial Court while passing the impugned order in paragraph No.6 has categorically stated that a full fledged enquiry is required to be drawn about the validity and legality of the second marriage of late Shivram Bhima Sagale with the mother of Ashok Shivram Sagale and Pushpa Shivram Sagale (Puspa Suresh Wagh).

5. In that view of the matter, she would submit that the impugned order has been correctly passed and unless that full fledged enquiry establishes the nexus of Jijabai Shivram Sagale with the deceased Shivram Bhima Sagale they should not be impleaded as parties at all. She would submit that in paragraph No.7 of the impugned order, the learned Trial Court has however admitted all of them to be heirs of late Shivram Bhima Sagale, namely Hirabai Shivram Sagale, Raju Shivram Sagale and Lata Shivram Sagale (Sou Lata Madhukar Sagale) on one hand and Jijabai Shivram Sagale, Ashok Shivram Sagale and Pushpa Shivram Sagale (Puspa Suresh Wagh) on the other hand as Class-I heirs. She would submit that observation that all are Class-I heirs is incorrect.

6. I have perused the pleadings and record of the case. It is seen that Applications below Exhibit-248 and Exhibit-250 are identical Applications filed by Raju Shivram Sagale seeking impleadment of Hirabai Shivram Sagale, Raju Shivram Sagale and Lata Shivram Sagale (Sou Lata Madhukar Sagale) in the suit filed by Shivram Bhima Sagale. The impleadment is sought on the basis that Hirabai Shivram Sagale, Raju Shivram Sagale and Lata Shivram Sagale (Sou Lata Madhukar Sagale) are the legal heirs. In that very suit, incidentally Raju Shivram Sagale is Defendant namely Defendant No.6 before the Trial Court. In so far as Applications below Exhibit-254 and Exhibit-278 are

concerned, the same are identical Applications filed by Jijabai Shivram Sagale, Ashok Shivram Sagale and Pushpa Shivram Sagale (Puspa Suresh Wagh) seeking their impleadment being legal heirs of late Shivram Bhima Sagale. Application below Exhibit-305 is Application filed by Raju Shivram Sagale once again requesting impleadment of legal heirs. Considering the relief prayed for in all Applications, the common order has been passed by the learned Trial Court impleading the six Applicants as legal heirs of Shivram Bhima Sagale.

7. However while doing so and specifically in view of the observations and findings returned in paragraph No.6, learned Trial Court is directed to undertake an appropriate enquiry with respect to the validity and legality of the second marriage of late Shivram Bhima Sagale with Jijabai Shivram Sagale as also the issue of the Will of the deceased Shivram. In so far as rights of Ashok Shivram Sagale and Pushpa Shivram Sagale (Puspa Suresh Wagh) are concerned, they shall strictly be governed by the Hindu Marriage Act, 1955 (for short '**the said Act**') and more specifically by Section 16 of the said Act as also any other provisions under the said Act in respect of rights of children born out of void and / or voidable marriage and as to whether to treat them as legitimate children for the share of ancestral properties.

8. By this I mean that Hirabai Shivram Sagale's branch and Jijabai Shivram Sagale's branch shall be entitled to plead their respective cases before the learned Trial Court seeking substantive rights in the ancestral property belonging to late Shivram Bhima Sagale strictly in accordance with law. Learned Trial Court has itself opined that the suit is very old and it needs to be proceeded with. Both learned Advocates appearing before me for the respective parties are also *ad idem* that suit needs to be proceeded with.

9. In that view of the matter, while sustaining the impugned order dated 12.09.2014, it is directed that learned Trial Court shall take into cognizance the aforementioned directions given herein and proceed with the suit proceedings strictly in accordance with law and decide the same on the basis of evidence that shall be lead by the respective parties.

10. Ms. Gaikwad would submit that in so far as the present suit is concerned, it should be proceeded on its own merits but there is a companion and parallel suit seeking partition of properties namely Regular Civil Suit No.167 of 1986. This suit is between the same family members of late Shivram Bhima Sagale for partition of ancestral properties. She would submit that both the suits are tried before the same Court. In view of the request made by Ms. Gaikwad, learned Trial Court shall take the above directions into cognizance and

determine Regular Civil Suit No.167 of 1986 also as expeditiously as possible strictly in accordance with law.

11. With the above directions, Writ Petition No.9 of 2015 stands allowed and is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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