



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 13717 OF 2024

Meenakshi Inderjeet Sachdev

Age : 69 years, Occupation : Retired

Having address at -

A-2, Ground floor, Ganesh Baug,

Sir Balachandra Road, Matunga,

Mumbai – 400 019.

...Petitioner

Vs.

Amit Padmakar Bole

Age : 55 years, Occupation : Business

Having address at -

10/11, Shree Ganesh Baug, 214, Sir

Balachandra Road, Matunga East,

Mumbai – 400 019.

...Respondent

Adv. Chaitanya Bhandarkar	Advocate for the Petitioner
Adv. Chaitanya Chavan i/by Adv. Mayuresh Borkar	Advocate for the Respondent

CORAM : S. M. MODAK, J.

DATE : 21st OCTOBER 2024

ORAL JUDGMENT :-

1. Heard learned Advocate for the Petitioner-defendant proposed who is legal representative of the deceased-defendant and also heard learned Advocate for the Respondent-Plaintiff.

2. The correctness of the Order passed by the Judge Small Causes,

Court Mumbai dated 12.07.2023 is challenged by the proposed legal representative of the deceased-defendant. By the impugned order, the trial Court has allowed the Plaintiff to carry out amendment as per the schedule. As per the schedule, the name of the original defendant Mr. S. Rama Iyer **was deleted** and name of the present Petitioner being daughter of the deceased defendant **was brought on record**.

3. Two contentions are raised in this petition. One is predecessor in title of the Plaintiff-Amit by name Mrs. Tara Bole prior to filing of suit was aware about death of the deceased Defendant S. Rama Iyer and in fact when the suit was filed S. Rama Iyer was not alive and as such the suit is nullity. The Petitioner has pleaded “*original Defendant S. Rama Iyer expired on 19.12.1985 much earlier to filing of the suit and his wife Mrs. Rajlakshmi Rama Iyer has in fact paid the rent to Tara Bole predecessor in title of the Plaintiff*”. This was cited as one of the circumstance to show that Tara was aware about death of S. Rama Iyer.

4. According to learned Advocate for the Petitioner, the trial Court has not given any findings about the plea of earlier knowledge taken by them and secondly the trial Court has not clarified from which date the amendment will be effective. It is for the reason the suit for eviction is

filed only on the ground of non-user. It is true that non-user has to be six months prior to filing of the suit.

5. Learned Advocate for the Petitioner contends the trial Court though referred about two judgments relied upon by the Plaintiff in para no. 3 of the Order, there are no findings as to how ratio therein is applicable to the application for amendment. He invited my attention to the factual aspects of these judgments and submitted that facts are totally different.

6. This contention is denied by the Respondent-Plaintiff. According to them, in fact they got knowledge about death of S. Rama Iyer, when his wife Rajlakshmi Rama Iyer has written a letter dated 13.12.2017 addressed to the Small Causes Court and Plaintiff got knowledge on 25.09.2018. Further contention is raised in fact the writ of summons was returned as it was refused and then writ of summons was served by way of pasting.

7. Learned Advocate for the Respondent/original Plaintiff also submitted that scope of the inquiry while permitting the amendment by way of bringing legal representatives on record is limited. The Court only to see whether the proposed defendants can be sued after death of

the original defendant. He further contended that whether the suit is filed wrongly against the deceased Defendant can be inquired into when the suit will be tried. On the point of maintainability of the such suit, he relied upon the observations in case of *Stephen Laslie Victor D'souza and Ors. Vs. Stanley Antony D'souza and Ors. Etc.* passed by this Court in Chamber Summons No. 1081 of 1997 in Suit No. 1164 of 1996, on 26.02.1998 and observations in para no. 7.

8. It is true that while dealing with such application, the scope of inquiry is limited. The Court has to see whether right to sue survives against the proposed Defendants or not, because ultimately there has to be some person who can contest the suit.

9. So far as the right of seeking eviction decree is concerned, the allegation that Tara Bole was aware about death of the original tenant S. Rama Iyer is disputable issue. But proposed Defendant-Meenakshi is admitting her relationship with the original tenant S. Rama Iyer. Further my attention is invited to the averments in affidavit-in-reply filed by the proposed Defendant by way of reply to amendment application. She has pleaded that she was residing alongwith her brother in the suit premises alongwith original tenant.

10. So I think the trial Court has not committed an error in allowing the amendment. Rest of the issues whether the Plaintiff is aware about death of the original tenant prior to filing of the suit can be gone into when the proposed defendant will file written statement and when the Court will frame issue and when evidence is recorded. These much observations are sufficient.

11. As per Section 21 of the Limitation Act when new Plaintiff/defendants is substituted, suit is deemed to have been instituted when he was made a party. There are two exceptions. If this omission was due to bonafide mistake, then amendment will relate back to date of suit. If devolution/assignment took place during pendency of suit, then also amendment will relate back to suit. The Plaintiff contends knowledge about death of defendant after filing of suit (It is disputed). This can be considered as a bonafide mistake. So amendment will relate back to date of suit.

12. All contentions are kept open. Ultimately, the Court will inquire whether the proposed defendants have used the suit premises prior to filing of the suit or not.

13. With these observations following order is passed:-

ORDER

- (a) Writ Petition is dismissed.
- (b) The proposed Defendant is at liberty to file written statement within six weeks from today as way of last chance.
- (c) Trial Court to decide the suit on its merits without being influenced by above observations.

[S. M. MODAK, J.]