

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7508 OF 2024

Anupama Amarsinh Deshmukh

.. Petitioner

Versus

Sindhutai Prataprao Jagtap & Ors.

.. Respondents

- Mr. Veerdhaval Kakade for Petitioner

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 10, 2024

P. C.:

1. Heard Mr. Kakade, learned Advocate for Petitioner.
2. Perused the impugned order dated 02.01.2024. Petitioner is aggrieved with impleadment of Defendant No. 6(B) and 6(C) who are the legal heirs of original Defendant No. 6 – Lilabai Baburao Konde-Deshmukh.
3. It is seen that Suit is of the year 2001. Petitioner before me is the daughter of the adopted son of Lilabai. Petitioner made an Application seeking impleadment in place of her deceased father Defendant No. 6 Pratap Baburao Konde-Deshmukh which has been rejected by order dated 11.08.2023. Said order is at Exh. D, page No. 49 of Petition. It is a handwritten order which states that production of the documents that Applicant is the legal heir is not done and considering the same, Application is rejected. This is what is informed

and argued by Mr. Kakade. He would next point out that this order is the subject matter of challenge along with the order dated 21.01.2024 of impleadment of Respondent No. 6(B) and 6(C). Mr. Kakade would next submit that Plaintiff in the Suit proceedings also filed further Application which is appended at Exh. E, page Nos. 51-54 seeking deletion of the name of Pratap B. Konde-Deshmukh who was impleaded as Defendant No. 6(A) to the suit proceedings. He would submit that, that Application has been allowed by the learned Trial Court and that order is at page No. 54 of the Petition. That order is also under challenge. Thus, it is seen that there are two orders passed on 02.01.2024 and one order passed on 11.08.2023 which are the subject matter of challenge in the present Petition.

4. One of the issues which has been raised by the Court below is that Petitioner has not produced documents on which she claims to be the legal heir of the deceased. That is the reason for passing the order dated 11.08.2023.

5. Mr. Kakade would submit that he would take appropriate instructions and submit the relevant documents before this Court to prove that the Applicant in the Application filed below Exh. 146 is the daughter of deceased Pratap B. Konde-Deshmukh. It is further seen that original Defendant No. 6(A) has already been deleted by virtue of the order dated 02.01.2021, hence unless the original Defendant No.

6(A) is restored back as a party to the proceedings, the other Application cannot be heard by this Court. In so far as the order dated 02.01.2024 passed in the Application filed below Exh. 147 which is at Exh. E, page No. 51 is concerned, the order has been passed on the Application made by the Plaintiff. Hence, Plaintiff (Respondent No. 1) will have to be heard by me.

6. Mr. Kakade would submit that the second order passed on 01.01.2024 concerns impleadment of third parties i.e. Defendant Nos. 6(B) and 6(C). They are Respondent Nos. 6 & 7 herein. He would submit that Petitioner has serious objection for their impleadment and has therefore challenged the order dated 02.01.2024 which is appended at Exh. H, page Nos. 67-70 of Petition.

7. In view of the above, issue notice to Respondent Nos. 1, 6 and 7, the principal contesting Respondents made returnable on 24.06.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on the said 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. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner

8. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

9. Mr. Kakade would submit that in the meanwhile after the aforesaid orders have been passed, Plaintiff in collusion with Defendant Nos. 6(B) and 6(C) have filed an Application before the learned Trial Court to send the matter to the Lok-Nyalalaya for settlement which is evident from the case status which is appended at page No. 71 of the Petition. In view of this development, the proceedings before the learned Trial Court in the Suit shall stand stayed until the present Writ Petition is determined by this Court. Copy of this order shall be placed before the Trial Court.

10. Stand over to **24th June, 2024.**

[MILIND N. JADHAV, J.]

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