

HARSHADA H. SAWANT
(P.A.)

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 and Ors.

.. Respondents

.....

- Mr. Veerdhaval Kakade, Advocate for Petitioner.
- Mr. Drupad S. Patil a/w. Mr. Namitkumar S. Pansare, Advocate for Respondent No.1.

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 25, 2024

P.C.:

1. Heard Mr. Kakade, learned Advocate for Petitioner and Mr. Patil, learned Advocate for Petitioner. Perused the pleadings.

2. The present Writ Petition takes exception to three interlocutory orders passed by learned Trial Court in Interim Applications filed before learned Trial Court by the parties. Firstly, order dated 11.08.2023 is subject matter of challenge wherein the Writ Petitioner's impleadment to the suit proceedings is rejected. Writ Petitioner is the daughter of Defendant No.6(A) – Pratap Baburao Konde. Record and pleadings shows that Defendant No.6(A) – Pratap Baburao Konde was impleaded as legal heir of original Defendant No.6 on the ground that his name was mutated in Revenue Record in respect of one of the suit property in respect of which Defendant No.6 had claimed interest.

3. Defendant No.6(A) – Pratap Baburao Konde claimed to be adopted son of original Defendant No.6. At this stage, it needs to be stated that originally suit is filed by one of the Plaintiff (one of the sibling) seeking partition of about 8 immovable properties *qua* Defendant Nos.1 to 5 who are his siblings. Further the suit also seeks declaratory relief in respect of the one out of 8 properties against Defendant No.6 who claims to be purchaser of interest in the said suit property from one of the sibling of the Plaintiff and Defendant Nos.1 to 5. The suit is filed in the year 2001. In this view of the matter, when the suit progressed further, application by daughter of Defendant No.6(A) – Pratap Baburao Konde came to be rejected by order dated 11.08.2023 which is challenged in the present Writ Petition.

4. The second challenge maintained in the Writ Petition is to the order dated 11.08.2024 passed by the learned Trial Court whereby Plaintiff's application for deletion of Defendant No.6(A) – Pratap Baburao Konde's name as party stands allowed. Once again this challenge is maintained by the Writ Petitioner who is the daughter of Defendant No.6(A) – Pratap Baburao Konde.

5. The third challenge is maintained to the order dated 02.01.2024 passed by the learned Trial Court below Exhibit-149 of Regular Civil Suit No.32 of 2001 allowing impleadment of Respondent Nos.6 and 7 to the suit proceedings. It is seen that Respondent Nos.6

and 7 claim to be nephews of the original deceased Defendant No.6 and therefore seek to claim her interest in the respect of one of the suit properties.

6. As delineated hereinabove, the total number of suit properties are 8 suit properties out of which one of the suit property was claimed by original Defendant No.6. It is seen that Writ Petitioner is the daughter of Defendant No.6(A) – Pratap Baburao Konde as also Respondent Nos.6 and 7 who claim to be nephews of original Defendant No.6 are concerned with the interest of original Defendant No.6 in one of the eight suit properties wherein Defendant No. 6A was also concerned.

7. In the above background, Plaintiff and Defendant Nos.1 to 5 have arrived at a compromise and have, *inter se*, settled their disputes pursuant to which Plaintiff has filed *pursis* on 18.06.2024 which has been taken on record by the learned Trial Court and directions are given to the other side to file their say. Today, it is seen that Writ Petitioner before me has challenged the aforesaid three orders. However, in view of the fact that Plaintiff and Defendant Nos.1 to 5 *qua* their disputes relating to partition of the suit properties have decided to settle their disputes *inter se*, there can be no impediment in allowing the *pursis* dated 18.06.2024 to be taken on record. The said *pursis* is allowed to be taken on record for withdrawal of the suit

proceedings.

8. Mr. Kakade would submit that withdrawal of the suit would also amount to the declaratory relief sought against Defendant No.6 and that will also be withdrawn. In respect of the right of original Defendant No.6, her legal heirs can file appropriate proceedings as available to them in law. Plaintiff is in the position of *dominis litis* and therefore entitled to withdraw the Suit if he so desires unconditionally. It is seen that one of the sibling has sold his undivided share and right to the Defendant No.6 as claimed by Defendant No.6. Record and pleadings also shows that Defendant No.6 expired in the year 2011. However further pleadings show that Defendant No.6(A) – Pratap Baburao Konde claimed to be the adopted son of original Defendant No.6. Therefore he claimed to be impleaded as Defendant No.6. The said Defendant No.6(A) – Pratap Baburao Konde expired in the year 2020. Pursuant to his demise Petitioner was impleaded in his place as his daughter. As against the right of the Writ Petitioner which emanates to her and flows through her father, it now transpires that Defendant Nos.6 and 7 have filed Application for impleadment which was allowed on 02.01.2024. Their impleadment is based on their proximity i.e. relationship with the original Defendant No.6 and their claim as nephews of Defendant No.6.

9. There is one more issue which Mr. Kakade has brought to the notice of the Court. He would submit that parties to the suit proceedings namely Plaintiff and Defendant Nos.1 to 5 have in the meanwhile, approached the Lok Nyayalaya for seeking an effective resolution to their dispute in entirety. According to him, that should also include parties pertaining to the declaratory relief in the suit proceedings sought against Defendant No.6. He would submit that if rights of Writ Petitioner are protected then there can be no impediment in allowing the Plaintiff and Defendant Nos.1 to 5 to arrive at a compromise in settling the suit proceedings and also withdraw the said suit. Mr. Patil however refutes this position and stated that his instructions are to withdraw the suit unconditionally.

10. However in order to protect rights of the Writ Petitioner who claims entitlement through her father Defendant No.6(A) – Pratap Baburao Konde, Writ Petitioner will have to file appropriate proceedings in the civil Court as available to her in law. She cannot agitate her rights in the present Writ Petition and preclude the Plaintiff and Defendant Nos.1 to 5 from settling their disputes *inter se* relating to partition of the suit properties. Undoubtedly, Writ Petitioner seeks to exercise her right only in the subject suit property and it would be directed only against the share of one of the sibling who has sold his share to the original Defendant No.6 and none others. Leaving the right of the Writ Petitioner entirely open in law to be agitated in any

appropriate proceedings as available to her in law to be filed in the Civil Court, there can be no impediment in allowing the Plaintiff to withdraw the present Suit. The *pursis* dated 18.06.2024 is directed to be taken on record and appropriate orders be passed allowing withdrawal of the suit proceedings.

11. Needless to state that Writ Petitioner's right claiming through Defendant Nos.6A and 6 are expressly kept open to be agitated as available to her in law. Equally, the nephews of Defendant No.6, namely Respondent Nos.6 and 7 herein who are not represented shall also be entitled to agitate their rights with respect to their entitlement as derivated through the original Defendant No.6 in the Civil Court as deemed fit.

12. With the above directions and more specifically in view of the fact that *pursis* dated 18.06.2024 has been accepted by this Court and appropriate directions have been given to the Plaintiff to withdraw the suit proceedings, the twin orders dated 11.08.2023 and 02.01.2024 need not be looked into as these orders are now completely redundant as the suit proceedings before Trial Court is allowed to be withdrawn.

13. Both Mr. Patil as well as Mr. Kakade point out that the *pursis* dated 18.06.2024 also refers to settlement between the nephews of original Defendant No.6. In so far this statement is concerned that is

not accepted by the Court. The Plaintiff and original Defendant Nos.1 to 5 are also permitted to file fresh *pursis* in so far as the principal prayer of partition and its settlement is concerned. In so far as the declaratory relief is concerned, the aforementioned directions shall govern the same. After taking instructions, at this juncture, Mr. Patil would submit that the Plaintiff will file a fresh *pursis* seeking withdrawal of the suit proceedings simpliciter without any condition. If that be so, he is permitted to do so and the Trial Court shall accept the same and allow the withdrawal of the suit.

14. With the above directions, Writ Petition stands disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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