

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10297 OF 2024

Mangesh Dhondu Nalavade & Anr.

.. Petitioners

Versus

~~Dhondu Dhaku Nalavade~~

(since deceased) through LRs.

Arun Dhondu Nalavade & Ors.

.. Respondents

-
- Mr. Viral Rathod i/by Mr. Saurav More for Petitioners

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 24, 2024

P. C.:

1. Mentioned at the time of rising for recess.
2. Heard Mr. Rathod, learned Advocate for Petitioners.
3. At the outset, Mr. Rathod would submit that Exh. F has been incorrectly placed in the present Petition and he would like to replace the same. Since this is a pre-hearing amendment, the amendment is allowed. Amendment is permitted to the above effect which is permitted to be carried out within a period of one week from today. Re-verification stands dispensed with.
4. Impugned order dated 15.04.2024 allows the Application filed below Exh. 41 by legal heirs of original Plaintiff after they were impleaded and brought on record.

5. Mr. Rathod would submit that SCS No. 601 of 2019 is filed for declaratory reliefs. Plaintiff has expired in the interregnum. His legal heirs have been brought on record, however his legal heirs preferred an Application seeking amendment to the Suit plaint by introducing certain additional reliefs which are contrary to the original cause of action stated in the Suit plaint. That Application was rejected by the Trial Court on 03.04.2024. Without challenging the said order dated 03.04.2024, Plaintiffs preferred an identical Application before the Trial Court on the same ground, which has been allowed by the impugned order dated 15.04.2024.

6. If what is argued is true, then allowing the second Application is clearly barred by the principles of *res judicata* and also *constructive res judicata* under the provisions of Section 10 of the CPC.

7. An arguable case is made out by Mr. Rathod for issuance of notice and immediate stay to the impugned order dated 15.04.2024. Hence, stay is granted to the impugned order dated 15.04.2024. I am also informed by Mr. Rathod that the Suit is being heard by the learned Trial Court on 26.07.2024. Learned Trial Court is directed to defer the hearing of SCS No. 601/2019 to a future date until the the present Petition is determined by this Court.

8. In the meanwhile, issue notice to the Respondents made returnable on 31.07.2024. Humdast permitted. In addition to

Court's notice, Petitioners are directed to serve copy of the Petition along with copy of this order on the 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 Petitioners.

9. Respondents are directed to remain present either by 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.

10. Stand over to **31st July, 2024.**

Amberkar

[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
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