



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.363 OF 2024
WITH
INTERIM APPLICATION NO.6617 OF 2024

Hemlata Sudhakar Patayane ... Appellant.
Versus
Aparna Arun Patayane and Ors. ... Respondents.

Mr. Rupesh R. Lanjekar for the Appellant.
Mr. Ravindra Vishnu-Laxmi Sankpal i/by R.V.Sankpal and Associates for
Respondent Nos. 1 to 3.

Coram : Sharmila U. Deshmukh, J.
Date : July 22, 2024

P. C. :

1. Heard.
2. By this Appeal, the original-Plaintiff is before this Court challenging the judgment dated 11th January, 2024, dismissing the suit on the ground of non-joinder of necessary party.
3. The facts of the case are that SC Suit No.381 of 2018 was filed by the Plaintiff claiming partition and separate possession of the suit property. The contention of the Plaintiff was that her father-in-law was the owner of the property, who had four sons and seven daughters including the Plaintiff's husband who had expired. It was contended that the suit property was purchased by her father-in-law

out of his own income and that the Plaintiff is entitled to partition having 1 ½ share in the suit property.

4. The suit came to be resisted by the Defendants and one of the contentions raised is that the suit was bad for non-joinder of necessary parties as all the children of the deceased-Jairam Ambu Patayane was not made party to the proceedings. It was further contended that the partition had already taken place during the life-time of Jairam.

5. The Trial Court framed about seven issues and has answered Issue Nos.3 and 7 as to whether all the legal heirs of the deceased are impleaded as parties to the suit and whether the Plaintiff is entitled to partition and separate possession of the property in the negative. The Trial Court noted that the deceased-Jairam had four sons and seven daughters, however, all the 11 siblings have not been joined. Although evidence was led on all the issues, in view of the fact that in a suit for partition all the necessary parties were not joined, the suit came to be dismissed by the Trial Court.

6. Learned counsel appearing for the Appellant would submit that as the suit was dismissed solely for reason of non-joinder of necessary parties, the suit may be remanded to the Trial Court for giving an opportunity to Plaintiff to joint all parties by amending the suit. He relies upon the decision in the case of ***Baburao Sitaram Zende and***

Anr. vs. Vimal Prakash Zende [2018 SCC OnLine Bom 16304].

7. *Per contra*, learned counsel appearing for the Respondents would submit that despite being aware of the necessary parties and specific contention being taken by the Defendants in the written statement, the Plaintiff did not join the necessary parties and has thereby suffered the dismissal of the suit. He submits that remand of the matter would lead to a *de novo* trial and would further cause prejudice to the Defendants.

8. Perusal of the impugned judgment would indicate that the Trial Court has dismissed the suit only for the reason that all the necessary parties were not before the Court and in view of the same has not rendered finding on the other issues which were framed by the Trial Court. The decision in the case of ***Baburao Sitaram Zende*** (supra), is squarely applicable to the facts of the case where the learned Single Judge of this Court has held that if non-joinder of the necessary party to the suit is not tenable then the only course open to the Appellate Court was to remand the suit to give an opportunity to the Plaintiff to amend the plaint and to add those parties so as to achieve substantial cause of justice.

9. In light of the said decision which is binding upon this Court, the impugned judgment dated 11th January, 2024 is quashed and set aside. SC Suit No.381 of 2018 is restored to the file of Trial Court. The

Trial Court is directed to give an opportunity to the Plaintiff to file necessary Application for the purpose of joining the necessary parties and thereafter to decide the suit afresh.

10. It is made clear that all rights and contentions of both the parties are expressly kept open and if any, such Application is filed, the Trial Court to decide the same on its own merits and in accordance with the law. As the suit is being remanded the Plaintiff will have an opportunity to lead additional evidence in addition to the evidence which has been already led. Similarly, the Respondents who have not led any evidence will have the opportunity to lead evidence and in light of the evidence, the suit is to be decided afresh on its own merits and by taking into consideration the evidence which is produced on record by the parties.

11. First Appeal stands allowed in the above terms.

12. In view of the disposal of the Appeal, Civil/Interim Applications, if any, taken out in this Appeal, does not survive and same is disposed of.

[Shamila U. Deshmukh, J.]