

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 409 OF 2024
IN
SUIT NO. 114 OF 2024

Sanjusha Khan and anr .. Applicants
Versus
Sajid Khan and ors .. Respondents
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Mr.Archit Jayakar with Pooja Yadav i/b Jayakar and Partners for the applicant/original plaintiff.
Ms.Dhanashree Hublikar i/b YMK Legal for defendant no.2.
Mr.Rumi Mirza i/b Kaushal Thakker for defendant nos.1, 3 to 5.

CORAM: BHARATI DANGRE, J.
DATED : 10th APRIL, 2024

P.C:-

1 Suit No.114/2024 is filed for a declaration that the plaintiff Sajid Khan is the owner of Sea Glimpse Flat No.21, to the exclusion of the defendants and for certain ancillary reliefs.

Suit was instituted through his next friend Sanjusha Khan (his wife) against the defendants, in the wake of the allegation that the interest of the plaintiff, being an adopted son of Rajkumar and Sunita Pitamber, is sought to be denied by the defendant nos.1 and 2, the executors of the Will (now discharged) through the defendant nos.3 and 4, the Companies controlled by defendant no.1.

In the Suit, an application under Order 7 Rule 11 is filed by defendant no.1 and 3 to 5, praying for dismissal of the Suit and the same is pending.

2 During the pendency of the Suit, the plaintiff has passed away on 22/12/2023 and the death certificate issued by the Department of Panchayat, Government of Kerala is placed on record along with the Interim Application taken out on behalf of the two applicants; Sanjusha, wife of Sajid Khan and Sameer, son of the original plaintiff for substituting the plaintiff and continuing the Suit, as the cause of action survives in them.

3 The Schedule-A amended to the application comprise of the necessary amendment to be carried out in the wake of substitution of the original plaintiff by the legal heirs.

The application is contested by defendant no.1, 3 to 5 by filing an affidavit in which the maintainability of the Suit itself through the next friend Mrs.Sanjusha Khan, is contested by submitting that no inquiry was conducted as contemplated under Order XXXII Rule 15, to establish that the plaintiff was incapable by reason of any mental infirmity, and was unable to protect his own interest.

Apart from this, the marriage of Sanjusha to the plaintiff is also denied with a further pleading that one Simon Khan, residing in London is also the son of the deceased Mr.Sajid Khan and it is also contended that this is in the knowledge of the

Applicant who are seeking their substitution in place of Mr.Sajid Khan.

4 On hearing the learned counsel representing the defendants who have raised the objection to the above effect, I deem it appropriate that as far as the maintainability of the Suit at the instance of Sanjusha Khan, by by-passing the process prescribed under Order XXXII Rule 15, is an objection which ought to be contended while contesting the Suit by taking appropriate steps, though I am informed that an Application under Order VII Rule 11 is filed, this particular plea is not raised therein.

In any case, that this do not forbid the defendants from taking a plea when they contest the Suit itself.

5 As far as other son Simon Khan who is alleged to be the son of Sajid Khan is concerned, on oath, the applicants have made a statement that they are the only legal heirs of Sajid Khan and in case, the defendants are in a position to procure any reliable information to that effect, they may, at an appropriate stage seek his impleadment.

However, at present, since the cause of action in the Suit survives in the applicants who are the legal heirs of deceased Sajid Khan, I deem it appropriate to permit their impleadment as plaintiff no.1A and 1B in the Suit along with the consequential amendments to be carried out in the plaint as well as the Interim

Application.

The necessary amendment shall be effected within a period of two weeks in terms of Schedule A.

Re-verification is dispensed with and amended copy of the plaint/Interim Application shall be served upon the respondents/defendants who are at liberty to complete the pleadings.

Interim Application stand disposed off.

(SMT. BHARATI DANGRE, J.)