



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4340 OF 2019

- 1) Gajanan s/o Modakrao Kale,
Age 67 years, Occupation – Retired,
- 2) Ku. Nalini d/o Modakrao Kale,
Age 57 years, Occupation – Household,
Both residents of Moti Nagar, Amravati,
Tahsil and District Amravati.
- 3) Rameshwar s/o Modakrao Kale,
Age 56 years, Occupation – Retired,
R/o Old Town, Badnera, Tahsil and
District Amravati.
- 4) Sau. Vina w/o Rameshrao Askar,
Age 51 years, Occupation – Housewife,
R/o Sambhaji Nagar, Yavatmal,
Tahsil and District Yavatmal.
- 5) Sau. Rekha w/o Krushnarao Kahale,
Age about 72 years, Occupation – Housewife,
R/o Gopal Nagar, Amravati, Tahsil and
District Amravati.

.... **PETITIONERS**

VERSUS

- 1) Suresh s/o Modakrao Kale,
Age 72 years, Occupation – Retired,
R/o Moti Nagar, Amravati, Tahsil and
District Amravati.
- 2) Sau. Uma w/o Sureshrao Shete,
(Dead), through Legal Heirs,
- 2.i) Suresh s/o Gajananrao Shete,
Age 67 years, Occupation – Retired.
2. ii) Manish d/o Suresh Shete,
Age 33 years, Occupation – Business,

Nos.2.(i) and 2. (ii) are residents of
Balaji Nagar, Near Moti Nagar,
Amravati, Tahsil & District Amravati.

.... **RESPONDENTS**

Mr. A.J. Kadu, Counsel for the petitioners (**through V.C.**),
Mr. R.D. Wakode, Counsel for respondent No.1.

CORAM : **ABHAY J. MANTRI, J.**

DATE : **19th OCTOBER, 2024**

ORAL JUDGMENT :

Rule. Rule is made returnable forthwith and heard with the consent of the learned Counsel for the parties.

2. The petitioners, being aggrieved by the order dated 26-03-2019, passed by the 5th Jt. Civil Judge J.D. Amravati, below Exhibit 15, in R.M.J.C. No.436/2015, whereby rejected the application for permitting them to amend the application, has preferred this petition.

3. On 12-06-2015, the petitioners filed an application for the grant of a legal heirship certificate under Clause 2 of the Maharashtra Regulations VIII of 1827. I would like to reproduce paragraph 2 of the said application:

“2. That, the applicant No.1 and 3 and non-applicant No.1 are the sons and applicant No.2, 4 and 5 and non-applicant No.2 are daughters of deceased Mirabai Modakrao Kale died on 20-1-1989 and Modakrao Namdeorao Kale died on 26-03-1991 at Amravati respectively.”

On a plain reading of said application, it seems that the petitioners' case is that they and the respondents are the children of Mirabai Modakrao Kale and Modakrao Namdeorao Kale, who died in 1989 and 1991, respectively.

4. Respondent No.1 appeared in the proceedings and resisted the application, contending that he alone is the legal heir of the deceased Mirabai. He categorically denied that the petitioners were children of the Mirabai. The petitioners have suppressed the material fact that the Mirabai is their stepmother, and she is the real mother of non-applicant No.1.

5. As a sequel of the reply, on 22-01-2016, the petitioners have moved an application for permitting them to amend the petition by inserting below para in paragraph No.1, as under :

“That Late Modakrao Namdeorao Kale and Late Meerabai Modakrao Kale had no issues from their wedlock. That with the consent of Meerabai Modakrao Kale, Modakrao Kale performed second marriage with her younger sister namely Shewantabai. Out of that wedlock, Modakrao Kale and Shewantabai born out 7 children which are the present applicants and non-applicants. That the Shewantabai died on

01-8-2006 at Amravati. After the death of Mirabai Modakrao Kale as per Section 15 of Hindu Succession Act Modakrao Namdeorao Kale became the legal heirs of Mirabai Modakrao Kale and after the death of Modakrao Namdeorao Kale the present applicants and non-applicants are the legal heirs of Mirabai Modakrao Kale and Modakrao Namdeorao Kale.”

Respondent No. 1 strongly objected to the application, and after considering the material, the trial Court rejected it, holding that the proposed amendment changes the nature of the proceedings and relief claimed by the petitioners.

6. On bare perusal of the original application and application for amendment, it clearly appears that initially, the petitioners claim that they are the children of the deceased Mirabai and Modakrao Kale. However, by filing the proposed amendment application, the petitioners want to withdraw the said averment, contending that Mirabai Modakrao Kale died issueless and out of the wedlock of Modakrao and Shewantabai, the petitioners and respondents are born to them. The proposed amendment itself shows that the petitioners want to withdraw the admission given in the original application. Certainly, the proposed amendment would change the nature of the proceedings, which is not permissible.

7. The learned Counsel for the petitioners, in support of his contentions, has relied upon the decision of the Hon’ble Apex Court in

the case of *Life Insurance Corporation of India Vs. Sanjeev Builders Private Ltd. and another* reported in *2023(2) ALL MR 333 (SC)* and drew my attention to para 70 of the said decision and submitted that the evidence is yet to be commenced and, therefore, the proposed amendment ought to have been granted. As against, the learned Counsel for respondent No.1 has relied on the decision of the Hon'ble Apex Court in the case of *Basavaraj v. Indira and others (2024) 3 SCC 705* and pointed out paragraph 14 of the said decision.

8. Having considered the facts of the case, it seems that the observations made in the case of *Life Insurance Corporation of India (supra)* are hardly of any assistance to the petitioners in support of their contentions. On the contrary, the dictum laid down in the said decision supports the case of respondent No.1. As per paragraph No.70 (iv) & (x) of the said decision, if the proposed amendment changes the nature of the suit or cause of action, so as to set up an entire new case, foreign to the case set up in the application, the amendment must be disallowed.

9. In addition, the learned Counsel for the respondents vide pursis dated 13-09-2024 has produced a copy of the heirship certificate granted in favour of respondent No.1 by the 4th Jt. Civil Judge, J.D.,

Amravati before the Court. The petitioners have challenged the said order before the District Court at Amravati. However, their application was rejected by order dated 16-08-2023. The learned Counsel for the respondents also informs that till this date, the petitioners have not challenged the said order. Therefore, said order attains finality.

10. On perusal of the impugned order, it seems that after considering the material before him, the learned Judge has held that the proposed amendment would change the nature of the application and the relief it claimed. I do not find any illegality or perversity in the impugned order. On the contrary, the impugned order was found to be well reasoned; therefore, in my view, no interference is required in writ jurisdiction.

11. The writ petition is rejected. No order as to costs.

Inform the learned Trial Court accordingly.

12. Rule stands discharged.

(ABHAY J. MANTRI, J.)