

(1997) 01 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 4505 of 1995

Akkatai Kaka Devkule and Others

APPELLANT

Vs

Bali Rama Devkule

RESPONDENT

Date of Decision : 09-01-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3(1)

Citation : (1997) 99 BOMLR 556

Hon'ble Judges : P.S. Patankar, J

Bench : Single Bench

Judgement

P.S. Patankar, J.—The Writ Petition has been filed by the original defendants challenging the order dated 25.8.1995 by which the application filed by the plaintiff therein under Order I Rule 10 of the CPC was allowed.

2. Civil Revision Application has been filed by the brother of the deceased plaintiff challenging the order dated 24.7.1995, below Exhibit 14, filed by him under Order XXII Rule 3(1) of the CPC to bring himself on record as the heir and legal representative of the original plaintiff. Hereafter parties shall be referred to as plaintiff and defendant.

3. It is necessary to state a few facts. The original plaintiff- Parsu Rama filed Special Civil Suit No. 27 of 1991 for decree of possession of the suit property after removing the construction made therein. Parsu Rama died on 4.9.1992. But no application for heirs was filed within time and hence suit stood abated. However, application Exhibit 14, came to be filed by Bali Rama, brother of Parsu Rama to bring himself on record as the heir and legal representative of Parsu Rama (plaintiff) on 9.2.1994 after condonation of delay. That application came to be opposed on behalf of the defendants and it came to be rejected by the learned Judge by order dated 24.8.1995 by refusing to condone the delay. The Civil Revision is filed challenging the said order.

4. Thereafter, Bali Rama filed another application, Ex. 28 under Order I Rule 10

of the C.P.C seeking to join himself as party to the suit. The said application came to be granted by the learned Judge on 25th August, 1995. The said order is under challenge in the Writ Petition. I shall first consider Writ Petition filed by the defendants.

5. The learned Counsel appearing for the defendants contended that the said suit was already abated in view of Order 22 Rule 3(2). The brother of Plaintiff -Bali Rama could not have filed the application under Order I Rule 10 of the C.P.C. to join himself as party to the suit. In my opinion, the contention raised by the learned Counsel for the petitioners is sound and deserves to be accepted. There could have been no addition of a party to the suit which was already abated.

6. As far as the Revision is concerned Bali Rama, brother of the original plaintiff, filed application, Exhibit 14, to bring himself on record as the heir and legal representative of the deceased plaintiff. In that application, he averred that he was not aware about the proceedings adopted by Parsu Rama who died on 4.9.1992. In December 1993, the defendant No. 1 and his sons started quarreling with him and denying his right in respect of the suit property. At that stage, it was expressed by them that the suit was decided in their favour. This led him to make enquiry in the Court and he came to know about the suit proceedings. It was further mentioned that he was old and was taking medical treatment. Because of the death of the brother, he had become physically and mentally weak. A reply came to be filed on behalf of the defendants contending that the news regarding the death of Parsu Rama was published along with the photo in a newspaper published from Kolhapur. They denied the contention regarding the applicant being old or taking medical treatment. They also denied that he has become mentally and physically weak. I find that the learned trial Judge in the order dated 24.7.95 considered nothing and merely said that the averments made in the application do not disclose sufficient cause for condonation of delay.

7. In my opinion, there was absolutely no reason why the statement made by the applicant that he was not aware about the proceedings adopted by Parsu Rama and he came to know about it after December, 1993 should not be accepted. He came to know because the defendant No. 1 and his sons were quarreling with him and were exercising their right and they were saying that the case was decided in their favour and so he enquired and filed an application on 9.2.94. Merely because the news regarding the death of Parsu Raina was published along with his photo in a newspaper, from Kolhapur cannot mean that this allegation made by the applicant was wrong or false.

8. The question to which the learned Judge should have addressed was whether Bali Rama was aware about the pendency of the proceedings or not. In fact, the defendants merely stated that the allegations made by Bali Rama - applicant were false and not true. But there was no basis and no reason to reject them. Merely because news item was published in newspaper about original plaintiffs death does not mean that his brother Bali Rama was aware about the

proceedings. It was not even the ease of defendants that they were staying together. If that case Bali Rama is accepted then he came to know about the death sometime in January, 1994 and the application was filed expeditiously on 9.2.1994. Therefore, there was sufficient cause shown to condone the delay. The learned Judge totally failed to exercise jurisdiction vested in him as he has not considered the case of Bali Rama - applicant.

9. In view of this. I pass the following order:-

(i) Rule in Writ Petition No. 4505 of 1995 is made absolute. The impugned order dated 25.8.1995 passed below Exhibit 28, is set aside. No order as to costs.

(ii) Rule in Civil Revision Application No. 91 3 of 1996 is made absolute. The impugned order dated 24.7.1995 passed below Exhibit 14, is set aside. The Application filed. Exhibit 14, is granted. The suit to proceed. No order as to costs.