

(2004) 10 BOM CK 0058

In the Bombay High Court

Case No : L.P.A. No. 81 of 1993 in Writ Petition No. 2571 of 1991

Keshao Maral and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 1
Limitation Act, 1963 — Section 5

Citation : (2005) 2 ALLMR 268 : (2005) 1 MhLj 1059

Hon'ble Judges : V.C. Daga, J; S.U. Kamdar, J

Bench : Division Bench

Advocate : S.A. Jaiswal, for the Appellant; P.B. Patil, for the Respondent

Final Decision : Allowed

Judgement

S.U. Kamdar, J.—C.A. No. 5922 of 2004 : By the present civil application, the applicants/respondents Nos. 2 and 3 are seeking early disposal of the Letters Patent Appeal. Civil Application is granted. Appeal is taken up hearing forthwith.

2. Heard learned Counsel for the parties. The present appeal is arising out of the order dated 10th March, 1992 passed by the Single Judge. By the impugned order dated 10th March, 1992, the learned Single Judge has dismissed the petition as abated. According to the learned Single Judge, there was delay in filing the application for bringing legal heirs of deceased respondent No. 3 on record and in view thereof, application for condonation of delay has been refused and the petition has been dismissed.

3. The main petition was filed challenging the order dated 4th July, 1991 passed by the Maharashtra Revenue Tribunal in Appeal No. I/B-109/89 confirming the order dated 10th September, 2004 passed by the Tahsildar. Some of the facts of the present case are as under :

4. That the respondent Nos. 2 to 5 are tribals under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribe Act, 1974. According to the

appellants, the said land being an area of 2.55 acres situated at village Bhadurna, Tahsil Mul, Dist. Chandrapur was agreed to be sold under an agreement to sell dated 27-11-1956 in favour of the father of the appellants and he was placed in possession of the property and deed was executed on 27-12-1950. According to the appellants, since then they are in peaceful possession of the property. In the year 1976-77, revenue proceeding commenced being Revenue Case No. 677/LND-31/76-77 and the appellants received notice dated 11-5-1979 u/s 3 of the Act. The notice was challenged by filing writ petition No. 3171 of 1979 and the said proceedings were stayed. On 24-2-1984 the petition was dismissed directing the appellants to appear before the authority. During the pendency of the said proceedings, one of the vendors, viz. Dina Durga Kowe died, leaving behind his widow Bhagirathabai and five daughters. The said persons were not made parties to the proceedings. By an order dated 10th October, 1984 an order came to be passed allowing the said application against the appellants herein. The appellants, therefore, filed an appeal before the Maharashtra Revenue Tribunal on 9-1-1989. The order of the Tahsildar was stayed by the Tribunal. However, the tribunal ultimately dismissed the appeal by an order dated 4th July, 1991. It is this order of dismissal of appeal by the Tribunal which was a subject-matter of challenge in writ petition No. 2571 of 1991.

5. During the pendency of the writ petition, appellants filed an application seeking permission to bring legal heirs of respondent No. 3 on record, saying that immediately after the knowledge of the death of the said respondent No. 3, the application was taken out. However, the learned Single Judge has by an impugned judgment dismissed the petition as abated on the ground that there is considerable delay of about six years in taking out the applications. It is this order of the learned Single Judge which is in appeal before us.

6. We have heard the learned Counsel for the parties. The learned Counsel for the appellants submits that the appellants and the respondents are residents of adjoining villages while the respondents are residents of adjoining villages which is at a distance of 5 km. and thus, they were not aware about the death of the respondent No. 3. He submits that that delay in the facts of the present case, deserves to be condoned in the interest of justice and appellants may be permitted to bring legal representatives of the deceased respondent No. 3 on record.

7. On the other hand, the learned Counsel for the respondents contends that the impugned order deserves no interference. He relied upon the Apex Court judgment in the case of Puran Singh and others Vs. State of Punjab and others, and contended that appellants cannot be permitted to bring legal representatives of deceased respondent No. 3 on record.

8. We are of the view that the order passed by the learned Single Judge is unsustainable in law. The delay in taking out the application has to be computed from the date of knowledge of the death of a party. It is the case of the

appellants that they had no knowledge and as soon as they acquired knowledge, they took out application for bringing legal heirs on record. This aspect as regards knowledge is not seriously disputed by the respondent. Secondly, it is now well settled that the provisions of Order 22, Rule 1, CPC are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspect of law. In the aforesaid circumstances, we are of the view that the learned Single Judge was in error in refusing to use discretion vested in him for condoning delay in taking out application for bringing legal heirs on record. Even if proceeding abates, the Court has ample powers to set aside the abatement, and condone the delay to bring legal heirs on record. We are supported in our aforesaid view by the Apex Court judgment in the case of S. Amarjit Singh Kalra (dead) by Lrs. and Others and Smt. Ram Piari (dead) by L.Rs. and Others Vs. Smt. Pramod Gupta (dead) by Lrs. and Others, wherein it is observed as under:

"Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid on justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 of CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination into an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in Jamabanddhi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even de hors the cause for the delay in filing the applications keeping in view the serious manner it would otherwise jeopardize an effective adjudication on merits, the rights of other remaining appellants for no fault of them. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttle the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of Court to do real, effective and substantial justice. Viewed in the light of the fact that each one of the appellants

had an independent and distinct right of his own not inter-dependent upon the one or the other of the appellants, the dismissal of the appeals by the High Court in their entirety does not constitute a sound, reasonable or just and proper exercise of its powers. Even if it has to be viewed that they had a common interest, then interest of justice would require the remaining other appellants being allowed to pursue appeals for benefit of those others, who are not before the Court also and not stultify the proceedings as a whole and non-suit the others as well."

9. In the light of the above, the order passed by the learned Single Judge is unsustainable. We allow the appeal, restore Writ Petition No. 2571 of 1991 to file. We permit the appellants to bring legal heirs of deceased respondent No. 3 on record. Since the writ petition is of the year 1991, we request the learned Single Judge to decide the writ petition as expeditiously as possible. We allow the appeal in terms aforesaid. However, there will be no order as to costs.