

(2010) 09 BOM CK 0186

In the Bombay High Court

Case No : Writ Petition No. 9258 of 2009

Raghunath Parbati Chavan

APPELLANT

Vs

Tarabai Shakar Chavan (since deceased) and Others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 5

Citation : (2011) 1 ALLMR 186

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : Chandrakant N. Chavan, for the Appellant;

Final Decision : Allowed

Judgement

J.H. Bhatia, J.—Rule. Returnable forthwith. Heard learned Counsel for the petitioner.

2. Notice was issued to the respondents with clear indication that the petition may be finally disposed of at the admission stage. In spite of service, none is present for the respondents today.

3. The record reveals that Regular Civil Suit No. 362/1999 was filed by one Tarabai Shankar Chavan against the defendant, who is petitioner before this Court, for partition and separate possession of certain properties. The respondents made an application Exhibit 57 on 12.8.2009 to bring themselves on record as legal heirs of the plaintiff - Tarabai, who had expired on 10.7.2009 on the ground that they were close relatives and legal heirs of the deceased. The trial Court passed the order on the said application immediately and allowed the applicants to be brought on record as L.Rs. of the deceased. The petitioner/defendant filed an application Exhibit 62 on 20.8.2009 before the trial Court to review and recall that order on the ground that the application Exhibit 57 was disposed of without giving any opportunity to the defendant to file his say. It was also contended that the respondents had not disclosed their relationship with the

deceased. According to the defendant, the respondents are neither relatives nor the legal heirs of the deceased plaintiff. The application Ex. 62 was rejected by the trial Court on the ground that the application Ex. 57 was filed within time and it was allowed and, therefore, there is no reason to review the same. The learned trial Court also noted that whether the respondents are legal heirs of the deceased plaintiff cannot be decided without trial of the matter. In view of this, the defendant has preferred the present petition.

4. When the sole plaintiff died and on application is filed by some persons claiming to be legal heirs, it is necessary for the trial Court to determine as to whether such applicants are or are not the legal representative of the deceased plaintiff. This is made clear by Order XXII Rule 5, C.P.C. That question has to be determined by the trial Court. Naturally, this cannot be determined without giving proper opportunity of filing reply and say on the said application to the defendants. When there is sole plaintiff in the suit, the suit may abate if legal heirs are not brought on record. In the present case, the application Exhibit 57 filed by the respondents was allowed immediately without even calling a say or reply of the defendants on the said application. Thus, the defendant was deprived of contesting that application. Calling say of the defendant on that application was important and necessary, particularly because the applicants therein had not disclosed their relationship with the deceased. They had simply said that they, being close relatives of the deceased, are her L.Rs. Merely saying that the applicant is the close relative of the deceased cannot be sufficient to hold that such person is the legal heir or a representative of the deceased. The question as to whether the present respondents are legal representatives of the deceased plaintiff has to be determined at the time of deciding the application for bringing such applicants on record and not at the time of final trial of the suit. The trial Court clearly committed error in allowing the application Ex. 57 without calling the defendant to give his say.

5. For the aforesaid reasons, the Petition is allowed. The impugned order dated 12.8.2009 below Exhibit 57 is hereby set aside. The trial Court shall hear both parties and determine the question as to whether the applicants therein are real legal representatives of the deceased plaintiff before allowing them to be impleaded as such. Rule made absolute accordingly.